



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2015

Mr. Bob Davis
Staff Attorney
Office of Agency Counsel, Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-10851

Dear Mr. Strickland:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 565826 (TDI# 159789).

The Texas Department of Insurance (the "department") received a request for seven categories of information pertaining to information submitted by BlueCross Blue Shield of Texas ("BCBS") during the years of 2009-2014. You state the department released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interest of BCBS. Accordingly, you state, and provide documentation showing, you notified this third party of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from BCBS. We have reviewed the submitted arguments and the submitted information.

Initially, we note you have only submitted information pertaining to the years of 2009, 2011, 2012, and 2013. To the extent information responsive to the remainder of the request existed on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply

to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note BCBS objects to disclosure of information the department has not submitted to this office for review. This ruling does not address information that was not submitted by the department and is limited to the information the department has submitted for our review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

The department and BCBS claim portions of the submitted information are confidential under section 552.101 of the Government Code in conjunction with section 38.356 of the Insurance Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 38.351 of the Insurance Code, which is part of subchapter H of chapter 38, authorizes the department to “collect data concerning health benefit plan reimbursement rates in a uniform format,” and to “disseminate, on an aggregate basis for geographical regions in this state, information concerning health care reimbursement rates derived from the data.” *Ins. Code* § 38.351. Section 38.355 of the Insurance Code provides in part, “[e]ach health benefit plan issuer shall submit to the department [. . .] aggregate reimbursement rates by region paid by the health benefit plan issuer for health care services identified by the department.” *Id.* § 38.355(a). Section 38.356 of the Insurance Code provides that “[e]xcept as provided by section 38.357, data collected under [subchapter H of Chapter 38 of the Insurance Code] is confidential and not subject to disclosure under Chapter 552, Government Code.” *Id.* § 38.356; *see id.* § 38.357 (the department shall provide aggregate health care reimbursement rate information to Department of State Health Services for publication).

You state the information you marked consists of data the department collected from BCBS pursuant to subchapter H of chapter 38 of the Insurance Code. You state the information at issue consists of BCSB's reimbursement rate numbers and a survey the department uses to assist in its collection of reimbursement rate numbers in future years. You state the information at issue is collected by the department in a uniform format. Based on your representations and our review of the information at issue, we find the information you have marked is confidential under section 38.356 of the Insurance Code and must be withheld under section 552.101 of the Government Code.¹

BCBS asserts the remaining information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Gov't Code* § 552.110(b). This exception to disclosure

¹As our ruling is dispositive, we need not address BCBS's remaining arguments against disclosure of this information.

requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; see also ORD 661 at 5 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

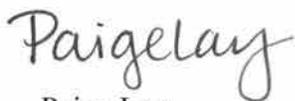
Upon review, we find BCBS has demonstrated the information at issue consists of commercial or financial information, the release of which would cause substantial competitive harm. Therefore, the department must withhold the information we have marked under section 552.110(b) of the Government Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 38.356 of the Insurance Code. The department must withhold the information we have marked under section 552.110(b) of the Government Code. The department must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

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Ref: ID# 565826

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. John F. Zabriskie
Counsel for Blue Cross Blue Shield of Texas
Foley & Lardner, LLP
321 North Clark Street, Suite 2800
Chicago, Illinois 60654
(w/o enclosures)