



February 4, 2000

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal Compliance, MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2000-0399

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132173.

The Texas Department of Insurance (the "department") received a request for information regarding PacifiCare of Texas, Inc. ("PacifiCare"). You indicate that some of the responsive information has been provided to the requestor. You claim that the submitted compensation agreement between PacifiCare and a specific physicians' group is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 20A.17 of the Insurance Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. The section also encompasses information protected by other statutes. Section 20A.17(b)(2) of the Insurance Code states in relevant part:

A copy of any contract, agreement, or other arrangement between a health maintenance organization and a physician or provider shall be provided to the commissioner.... Such documentation provided to the commissioner under this subsection shall be deemed confidential and not subject to the open records law.

After reviewing the submitted information, we agree that the document is protected from disclosure under section 552.101 in conjunction with section 20A.17 of the Insurance Code. Accordingly, you must not release the document to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Carla Gay Dickson". The signature is written in a cursive, flowing style.

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 132173

Encl. Submitted documents

cc: Ms. Jaye Wright
Franklin, Cardwell & Jones
1001 McKinney, 18th Floor
Houston, Texas 77002
(w/o enclosures)