



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 10, 2017

Mr. Bill Ballard
Assistant Criminal District Attorney
Kendall County
201 East San Antonio Street, Suite 306
Boerne, Texas 78006-2050

OR2017-23071

Dear Mr. Ballard:

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# 679268.

Kendall County (the "county") received a request for proposals for health insurance benefits and copies of "HB2015 reports" submitted to the county for the last five years. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the release of the submitted information may implicate the proprietary interests of United Healthcare Insurance Company ("United"). Accordingly, you notified United of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments on behalf of United. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by statute. The county raises section 552.101 of the Government Code in conjunction with section 1215.002 of the Insurance Code.

Chapter 1215 of the Insurance Code is found in title 8 of the Insurance Code, which concerns health insurance and other health coverages. Section 1215.002 provides in relevant part as follows:

(a) This chapter applies to a governmental entity that enters into a contract with a health insurance issuer that results in the health insurance issuer delivering, issuing for delivery, or renewing a group health plan.

(c) A report of claim information provided under this section to a governmental entity is confidential and exempt from public disclosure under [the Act].

See Ins. Code § 1215.002(a), (c). “Group health plan” has the meaning assigned by section 160.103 of title 45 of the Code of Federal Regulations, except that the term does not include disability income or long-term care insurance. *See id.* § 1215.001(a)(3). Section 160.103 of title 45 of the Code of Federal Regulations states a group health plan “means an employee welfare benefit plan (as defined in 29 U.S.C. [§] 1002(1)) to the extent that the plan provides medical care to employees or their dependents” 45 C.F.R. § 160.103; *see id.* § 1215.001(a)(5) (defining “plan” for purposes of chapter 1215 as an employee welfare benefit plan as defined in 29 U.S.C. § 1002(1)). Section 1002(1) of title 29 of the United States Code states “employee welfare benefit plan” and “welfare plan” mean any insurance plan an employer establishes or maintains for the purpose of providing benefits for its employees. *See* 29 U.S.C. § 1002(1). Thus, section 1215.002(c) makes confidential a report of claims made under an employee welfare benefit plan. Ins. Code § 1215.002(c); *see also id.* § 1215.003 (concerning receipt of and response to request for claim information).

The county states the submitted claim information was provided by United in accordance with chapter 1215 of the Insurance Code. We understand the claim information at issue concerns claims paid under an employee welfare benefit plan. Accordingly, section 1215.002(c) is applicable to the submitted information and the county must withhold it under section 552.101 of the Government Code on that basis. As our ruling is dispositive, we need not address the remaining arguments against its disclosure.

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,

A handwritten signature in black ink that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay
Assistant Attorney General
Open Records Division

PL/gw

Ref: ID# 679268

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Third Party
(w/o enclosures)