



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2020

Ms. Mary Dougherty
Open Records Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714

OR2020-25482

Dear Ms. Dougherty:

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# 848315 (TDI# R008755).

The Texas Department of Insurance (the "department") received a request for information pertaining to arbitrations and mediations conducted under Senate Bill 1264.¹ The department states it has released some information to the requestor. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 38.004 of the Insurance Code. The department informs us that in 2019, the Texas legislature enacted Senate Bill 1264, which, among other things, amended chapter 1467 of the Insurance Code and established new dispute resolution programs for out-of-network claims. The department further informs us section 38.004 of the Insurance Code requires the department to conduct a study and submit a report biennially on the impacts of Senate

¹ The department states, and provides documentation showing, it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Bill 1264, portions of which relate to arbitrations and mediations under chapter 1467 of the Insurance Code. *See* Ins. Code § 38.004(a). Section 38.004 provides, in relevant part, as follows:

(b) In conducting the study described by Subsection (a), the department shall collect settlement data and verdicts or arbitration awards, as applicable, from parties to mediation or arbitration under Chapter 1467.

(c) The department may not publish a particular rate paid to a participating provider in the study described by Subsection (a), identifying information of a physician or health care provider, or non-aggregated study results. Information described by this subsection is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The department:

(1) shall collect data quarterly from a health benefit plan issuer or administrator subject to Chapter 1467 to conduct the study required by this section; and

(2) may utilize any reliable external resource or entity to acquire information reasonably necessary to prepare the report required by Subsection (e).

Id. § 38.004(b)-(d). The department asserts the submitted information is protected by section 38.004. However, the department informs us the submitted information was collected through a portal established by the department on its website for the purpose of allowing providers and health plans to request mediations and arbitrations under chapter 1467 of the Insurance Code. *See id.* §§ 38.004(a), 1467.0505(b)(1), 1467.082(b)(1). Further, the department informs us it “will collect information for the study through a data call, not through the portal.” In addition, the department states that, although the submitted information contains itemized, non-aggregated data for each mediation and arbitration, “[t]his data was collected from the portal and does not consist of study results.” Upon review, we find the department has failed to demonstrate section 38.004(c) of the Insurance Code makes any of the submitted information confidential, and the department may not withhold any of it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 1467.055 of the Insurance Code, which provides, in relevant part, as follows:

(c-1) Information submitted by the parties to the mediator is confidential and not subject to disclosure under Chapter 552, Government Code.

Id. § 1467.055(c-1); *see id.* § 1467.001(5)-(6) (defining “mediation” and “mediator” for purposes of chapter 1467 of the Insurance Code). The department asserts the submitted information is protected by section 1467.055. However, the department informs us this information was collected through its portal, and not was not “submitted by the parties to

the mediator.” *See id.* § 1467.055(c-1). Accordingly, we find the department has failed to demonstrate section 1467.055(c-1) of the Insurance Code is applicable to the submitted information, and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 1467.087 of the Insurance Code, which provides, in relevant part, as follows:

(f) Information submitted by the parties to the arbitrator is confidential and not subject to disclosure under Chapter 552, Government Code.

Id. § 1467.087(f); *see id.* § 1467.001(1-a) (defining “arbitration” for purposes of chapter 1467 of the Insurance Code). The department asserts the submitted information is protected by section 1467.087. However, the department informs us this information was collected through its portal, and not was not “submitted by the parties to the arbitrator.” *See id.* § 1467.087(f). Accordingly, we find the department has failed to demonstrate section 1467.087(f) of the Insurance Code is applicable to the submitted information, and the department may not withhold it under section 552.101 of the Government Code on that basis. Consequently, the department must release the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 848315

Enc. Submitted documents

c: Requestor
(w/o enclosures)