



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2020

Ms. Mary Dougherty
Open Records Attorney
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2020-26043

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# 849276 (Ref. No. R008958).

The Texas Department of Insurance (the "department") received a request for certain information pertaining to a specified type of dispute resolution arbitration cases during a stated period of time. You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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. You inform 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. You further inform 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 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). You assert the submitted information is protected by section 38.004. However, you inform 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, you inform us the department “will collect information for the study through a data call, not through the portal.” In addition, you state 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 you have failed to demonstrate section 38.004(c) of the Insurance Code makes the submitted information confidential, and the department may not withhold any portion 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 1467.087 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). You assert some of the information at issue is protected by section 1467.087. However, you inform us this information was collected through the department’s portal, and was not “submitted by the parties to the arbitrator.” *See id.* § 1467.087(f). Thus, we find you have failed to demonstrate section 1467.087(f) is applicable to the information at issue, and the department may not withhold any portion of it under section 552.101 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jm

Ref: ID# 849276

Enc. Submitted documents

c: Requestor
(w/o enclosures)