



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

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Mr. Todd K. Brown
Executive Director
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704

OR95-1517

Dear Mr. Brown:

You seek clarification of Open Records Letter No. 94-068 (1994). That letter concluded that pursuant to the Open Records Act, chapter 552 of the Government Code, the Texas Workers' Compensation Commission ("commission") must release information on various "Employer's First Report of Injury or Illness Forms" ("TWCC-1 forms") with the exception of information on the forms that explicitly or implicitly reveals a claimant's identity. Information which explicitly or implicitly reveals a claimant's identity is confidential pursuant to section 402.083(a) of the Labor Code and must be redacted. *See* Open Records Decision No. 619 (1993). Thus, Open Records Letter No. 94-068 (1994) determined that section 402.083(a) of the Labor Code applied to the forms at issue there, but not in their entirety.¹ You ask whether Open Records

¹Open Records Letter No. 94-068 (1994) was concerned only with determining what information on the TWCC-1 forms in the requested investigative files was confidential under section 402.083(a) of the Labor Code as information that implicitly discloses the identity of the employee. The letter concluded that a claimant's birthdate and insurance identification number implicitly disclose a claimant's identity. The letter also concluded that none of the other information on the TWCC-1 forms, including a claimant's sex, race, ethnicity, or supervisor, the location of where the injury occurred, the names of any witnesses, and the name of the person who prepared the form, implicitly discloses a claimant's identity.

Open Records Letter No. 93-549 (1993), which concerned the same request for information, determined that pursuant to section 552.103(a) of the Government Code, the commission may withhold certain investigative documents that relate to commission hearings. That letter also determined that the commission may withhold under section 402.083(a) of the Labor Code information on the TWCC-1 forms that explicitly discloses a claimant's identity, *i.e.*, the claimant's name, spouse's name, social security number, home telephone number, and home address. Thus, under Open Records Letter Nos. 93-549 (1993) and 94-068 (1994), in regard to the documents that are not protected under section 552.103(a) of the Government Code, this office instructed the commission to release the TWCC-1 forms

Letter No. 94-068 (1994) requires the commission to withhold in their entirety TWCC-1 forms that are part of a claim file and not part of an investigative file pursuant to section 402.083(a) of the Labor Code.

The information requested in Open Records Letter No. 94-068 (1994) was information that was part of a particular investigative file concerning certain employer violations of the Texas Workers' Compensation Act. Thus, that decision applies only to the specific information requested there. The decision does not address the release of other TWCC-1 forms, for example, forms that are not a part of that investigative file, but that are a part of a claim file.

You do not indicate that the commission has received an open records request for a TWCC-1 form that is part of a claim file. Nevertheless, you ask whether TWCC-1 forms that are part of a claim file are confidential in their entirety, unless the requestor is one of the regulatory bodies specified in section 402.085(a) of the Labor Code.² Your position is that section 402.083(a) of the Labor Code, which this office construed in Open Records Decision No. 619 (1993) to make confidential portions of TWCC-1 forms in an investigative file, applies to TWCC-1 forms that are part of a claim file in their entirety. Thus, you urge that section 402.083(a) of the Labor Code applies to the forms in a claim file in a different way from the way that provision applies when the forms are part of an investigative file.

Section 402.083(a) of the Labor Code provides as follows:

(a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

In Open Records Decision No. 619 (1993), this office examined the meaning of the phrase "regarding an employee" in this provision, and concluded that section 402.083(a) makes confidential information in or derived from a claim file, but only if the information explicitly or implicitly discloses the identity of the employee filing the workers' compensation claim. Open Records Decision No. 619 (1993) at 10 (finding legislative history and language of Texas Workers' Compensation Act when read as whole do not indicate that section 402.083(a) should be read to protect employer's identity). Thus, the protection of section 402.083(a) does not extend to claim file information that does not implicitly or explicitly reveal an employee's identity. *See id.*

(Footnote continued)

with the following information redacted: 1.) the claimant's name, spouse's name, social security number, home telephone number, and home address, as information that explicitly reveals the identity of a claimant, and 2.) the claimant's birthdate and insurance identification number, as information that implicitly reveals the identity of a claimant.

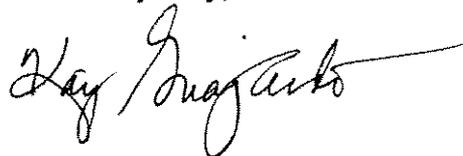
²Section 402.085 of the Labor Code requires the commission to release information on a claim to certain regulatory bodies for certain purposes.

Open Records Decision No. 619 (1993) did not limit its interpretation of the meaning of section 402.083(a) to only those forms that are "derived from a claim file" and part of an investigative file, notwithstanding the fact that the particular information at issue there was part of an investigative file. Nor did the decision, in its exhaustive examination of the Workers' Compensation laws and the legislative history of those laws, uncover a reason to treat forms in a claim file in a different way from forms "derived from a claim file" and part of an investigative file. Under section 402.083(a), the confidentiality of a TWCC-1 form "in a claim file" is subject to the same limitation as is the confidentiality of a TWCC-1 form "derived from a claim file" and part of an investigative file: the information must be "regarding an employee," a limitation this office has determined to mean only information that reveals, either explicitly or implicitly, the identity of the employee filing the workers' compensation claim.

Thus, we conclude that section 402.083(a) of the Labor Code applies to TWCC-1 forms in a uniform way, whether the form is "in a claim file" or "derived from a claim file" and part of an investigative file. Consequently, section 402.083(a) of the Labor Code does not make confidential the TWCC-1 forms in a claim file in their entirety, but only to the extent that information in the forms implicitly or explicitly reveals the identity of the employee filing the complaint. Thus, the Open Records Act grants access to information in a TWCC-1 form in a claim file to the extent that such information is not made confidential by section 402.083(a) of the Labor Code.

If you have any questions, please contact this office.

Yours very truly,



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Open Records Division

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