



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

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Mr. Craig H. Smith
Deputy General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR96-0380

Dear Mr. Smith:

You ask that we reconsider our decision in Open Records Letter No. 95-1508 (1995). This office assigned your request for reconsideration an identification number, ID# 37924.

Open Records Letter No. 95-1508 (1995) involved a request from a Texas Workers' Compensation Commission ("commission") employee for information pertaining to the commission's internal investigation of the employee's use of a rental car. The decision concluded that section 402.092 of the Labor Code, a provision that makes commission investigation files confidential, did not apply to the requested information and that consequently the commission may not withhold the requested information from required public disclosure pursuant to section 552.101 of the Government Code.

Section 402.092(b) states that "[c]ommission investigation files are not open records for purposes of Chapter 552, Government Code." Open Records Letter No. 95-1508 (1995) determined that section 402.092(b) did not apply to the requested internal affairs investigation file because this office construed the provision to apply to the "commission's investigation files concerning compliance with Texas worker's compensation laws." The decision concluded further that an investigation of an employee's compliance with internal policies regarding rental car use is not an investigation of compliance with Texas worker's compensation laws.

For purposes of this provision, section 402.092(d) defines "investigation files" as "any information compiled or maintained by the commission with respect to a commission

investigation *authorized by law.*"(Emphasis added.) You now argue that this office incorrectly construed section 402.092(b) because you say the decision in effect created an implied exception to the confidentiality for commission investigation files. You also aver that the requested information is within the section 402.092(d) definition of "investigation file" because section 402.042(b)(1) authorizes the commission executive director to investigate misconduct. Finally, you argue that the requested information contains information obtained or derived from the claim files of injured workers that is deemed confidential by section 402.083 of the Labor Code.

We now affirm Open Records Letter No. 95-1508 to the extent the decision found section 402.092 inapplicable to the requested information. We believe that if the legislature had intended the broad interpretation of section 402.092(b) that you propose, it would have expressly done so. While inquiries into employee misconduct may be characterized as investigations, we believe the sort of investigation the legislature meant to cloak with confidentiality under section 402.092 is one that is initiated by a complaint of a violation of a Texas worker's compensation law, rather than an internal referral for investigation of allegations of employee personnel misconduct. As for the information you say was obtained or derived from the claim files of injured workers, we conclude the commission must withhold that information from required public disclosure under section 402.083 of the Labor Code, but only to the extent that it explicitly or implicitly reveals the identity of employees who filed workers' compensation claims or their beneficiaries. Gov't Code § 552.101; *see* Open Records Decision No. 619 (1993).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 37924

Enclosures: Submitted documents

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(w/o enclosures)