

February 1, 1999



OFFICE OF THE  
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STATE OF TEXAS

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Ms. Susan M. Cory  
General Counsel  
Texas Workers Compensation Commission  
Southfield Building, MS-4D  
4000 South IH-35  
Austin, Texas 78704-7491

OR99-0290

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121717.

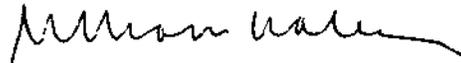
The Texas Workers' Compensation Commission (the "commission") received a request for information concerning the results of a particular investigation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 402.092 of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances, none of which appear to apply here. Labor Code § 402.092(a). "Investigative file" is defined as "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." *Id.* § 402.092(d). We note that subsection (c) of section 409.092 provides that information in investigation files which is derived from claim files is subject to the confidentiality provisions governing claim files. Section 402.083(a) makes information "in or derived from a claim file regarding an employee" confidential; however, subsection (b) of section 402.083 provides that information "concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 is not confidential." *See id.* § 415.008 (fraudulently obtaining or denying benefits).

The material you submitted as responsive to the request appears to be investigative material subject to section 402.092 and section 402.083(a). You do not indicate, nor do we find any indication in the submitted information, that the subject of the investigation has been "finally adjudicated of wrongfully obtaining payment" such that claim file information in the submitted materials would be public under section 402.083(b). If there has been such a final adjudication, the submitted material which is "in or derived from" the claim file associated with the investigative materials must be released. Otherwise, the submitted information is confidential in its entirety under sections 402.092 and section 402.083(a). In view of our resolution of this request under section 552.101 in conjunction with the Labor Code provisions discussed above, we do not address your claims under sections 552.108 and 552.111.<sup>1</sup>

We are resolving this matter with an 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 should 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,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 121717

Enclosures: Submitted documents

cc: Mr. Robert E. Riojas  
Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C.  
P.O. Box 799123  
El Paso, Texas 79999  
(w/o enclosures)

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<sup>1</sup>If the claim file information discussed above is specifically "not confidential" pursuant to section 402.083(b), it would not, in our view, be subject to protection under sections 552.108 or 552.111.