



August 12, 1999

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

OR99-2300

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126730.

The Texas Workers' Compensation Commission (the "commission") received requests for information concerning several current and former employees' employment. Although you state that you will release some of the requested information, you claim that the remaining information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile letter dated June 10, 1999, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that, under section 552.303(e), failure to comply would result in the legal presumption that the information at issue was presumed public.

You eventually provided our office with the information that was requested on July 14, 1999, after the deadline for submission had passed. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the act, and that the information is

presumed to be public. Open Records Decision No. 195 (1978). However, the presumption of openness may be overcome by a compelling demonstration that the information is deemed confidential by some other source of law or that third-party interests are at stake. Open Records Decision No. 150 (1977). Except for the information discussed below, you must release the information to the requestor.

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. The Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, section 5.08(b) provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to the medical records at issue is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b, §§ 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). The commission must release medical information only in accordance with the MPA. Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b, §§ 5.08 (c), (j), (k). We have marked the documents accordingly.

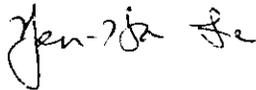
Section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. We have marked the drivers' license numbers that you must withhold under section 552.130.

Lastly, the documents include employment applications and resumes that contain information that may be excepted from public disclosure under section 552.117. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing

whether a public employee has family members when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987).¹ You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). We note that section 552.117 applies to a current or former employee of the commission. Thus, if the applicants are not current or former employees, then section 552.117 does not apply to the applicants' information. Open Records Decision No. 455 (1987).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 126730

Encl.: Submitted documents

cc: Mr. Anthony P. Griffin
1115 Moody
Galveston, Texas 77550
(w/o enclosures)

¹Please note that you must release Sandra Fullerton's social security number to the requestor as he is her legal counsel, and therefore, is authorized to receive the information.