



February 19, 2002

Ms. Myrna S. Reingold  
Galveston County Legal Department  
4127 Shearn Moody Plaza  
123 Rosenberg  
Galveston, Texas 77550-1454

OR2002-0781

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158717.

The Galveston County Beach and Parks Department (the "department") received a request for eight categories of information. You state that the department is willing to release information responsive to categories 1, 2, 4, 5, 6, 7, and 8 of the request. You claim, however, that the information responsive to category 3 of the request, which seeks "[a]ll Workman's comp claims expenditures for 1998, 1999, 2000, 2001," is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

In subsequent correspondence, the requestor clarifies category 3 of his request by indicating that he is seeking the total worker's compensation amounts paid by each department within Galveston County (the "county") for each of the years 1998, 1999, 2000, and 2001, as well as the amounts paid to each individual employee of the department.

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 402.083(a) of the Labor Code, pertaining to records of the Texas Workers' Compensation Commission (the "commission"), states:

- (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.

This provision makes confidential information in the commission's claim files. *See Open Records Decision No. 619 (1993)*. Section 402.086(a) of the Labor Code essentially transfers this confidentiality to information other parties obtain from the commission's files. Section 402.086(a) states:

(a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

In Open Records Decision No. 533 (1989), this office determined that the predecessor provision to sections 402.083 and 402.086 protected information received from the Industrial Accident Board (now the commission), but did not protect information regarding workers compensation claims that the governmental body did not receive from the commission. In this instance, you state that the responsive documents were provided to the county by the county's workers' compensation administrator. We are unable to ascertain, however, which of the submitted records, if any, were provided to the county or the county's worker's compensation administrator by the commission. We therefore conclude that, to the extent the submitted records were provided to the county or the county's worker's compensation administrator by the commission, the department must withhold such records in their entirety pursuant to sections 402.083 and 402.086 of the Labor Code. However, to the extent the responsive records were not obtained by the county or the county's worker's compensation administrator from the commission, the above provisions do not except such records from required public disclosure. Therefore, the submitted documents that were not provided to the county or the county's worker's compensation administrator by the commission are not excepted from disclosure by section 552.101 of the Act in conjunction with sections 402.083 and 402.086 of the Labor Code.

The Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12101 *et seq.*, provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. In addition, information obtained in the course of a "fitness for duty examination," conducted to determine whether an employee is still able to perform the essential functions of his job, is to be treated as a confidential medical record. 29 C.F.R. § 1630.14(c). *See also* Open Records Decision No. 641 (1996). The Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Upon review of your arguments and the submitted information, we are unable to conclude that any of the submitted information is excepted from disclosure under section 552.101 and the ADA.

Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. We understand the department's comments to assert that the disclosure of any information revealing the identity of an individual claimant implicates the claimant's right to privacy and must be withheld.

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

The court in *Industrial Foundation* specifically addressed information in worker's compensation claim files, and the court concluded that, in and of itself, information revealing the name and social security number of the claimant, the employer, and the alleged injury does not implicate an individual's common-law or constitutional right to privacy. 540 S.W.2d at 681, 686. We thus do not agree with the department's assertion that claimant identifying information must be redacted as implicating an individual's right to privacy.

To summarize, we conclude that: (1) to the extent the submitted records were provided to the county or the county's worker's compensation administrator by the commission, the department must withhold such records in their entirety pursuant to sections 402.083 and 402.086 of the Labor Code; (2) the submitted documents that were not provided to the county or the county's worker's compensation administrator by the commission are not excepted from disclosure and must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 158717

Enc: Submitted documents

c: Mr. Chris John Mallios  
1804 Flamingo  
League City, Texas 77573  
(w/o enclosures)