



October 30, 2002

Mr. Craig H. Smith
Director of Legal Services
Texas Workers' Compensation Commission
4000 South IH-35, MS-4D
Austin, Texas 78704-7491

OR2002-6171

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# 171533.

The Texas Workers' Compensation Commission (the "commission") received a request for "data in electronic form on all workers compensation claims necessary to determine if a subclaim exists on behalf of [Humana, Inc. ('Humana') and Wellpoint Health Networks, Inc. ('Wellpoint')]" You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 402.083 of the Labor Code provides that "[i]nformation 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." Labor Code § 402.083(a). This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993).

Sections 402.084 and 402.085 of the Labor Code provides for release of information on a claim only to certain enumerated persons or entities. *See* Labor Code §§ 402.084(a)&(b), 402.085. In pertinent part, section 402.084 provides as follows:

(b) Information on a claim may be released as provided by Subsection (a) to:

...

(8) a subclaimant under Section 409.009 that is an insurance carrier that has adopted an antifraud plan under Article 3.97-3, Insurance Code, or the authorized representative of such a subclaimant.

Labor Code § 402.084(b)(8). You state that the commission has not received documentation that Humana and Wellpoint are subclaimants on a specific claim. *See* Labor Code § 409.009 (defining subclaimant). Based upon your representation, it does not appear that any of the exceptions to confidentiality listed in sections 402.084 or 402.085 of the Labor Code are applicable here. Accordingly, we conclude that the commission must withhold the information that explicitly or implicitly discloses the identities of employees filing workers' compensation claims from the requestor pursuant to section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code. *See* Open Records Decision No. 619 (1993).

You further inform this office that the requested information contains medical records of claimants, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is 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.

Occ. Code § 159.002(b), (c). The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

In summary, the commission must withhold the information that explicitly or implicitly disclosed the identities of employees filing workers' compensation claims from the requestor pursuant to section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code. Medical records may be released only as provided under the MPA. The commission must release any remaining responsive information to the requestor.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

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Enc. Submitted documents

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