



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 5, 2003

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

OR2003-0768

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# 175989.

The Texas Workers' Compensation Commission (the "commission") received a request for specified data elements from all UB-92 medical bills submitted to the commission during a specific time period. You claim that a portion of 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. We have also considered the comments submitted to this office by the requestor. See Gov't Code § 552.304 (providing for submission of public comments).

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. You contend that the requested information is confidential under section 402.083 of the Labor Code. Section 402.083 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." Additionally, the requestor asserts that section 413.007 of the Labor Code is applicable to the requested information. Section 413.007(c) provides that "[t]he [Medical Review] division shall ensure that the data base is available for public access for a reasonable fee established by the commission."

In Open Records Decision No. 619, this office interpreted these provisions to mean that information in or derived from a claim file that explicitly or implicitly discloses the identity of the employee filing a workers' compensation claim is confidential. Open Records Decision No. 619 (1993). We determined that the claimants' names, spouses' names, social security numbers, and home telephone numbers and addresses explicitly disclose the identities of the injured employees. *Id.* at 10. However, we also determined that whether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis. *Id.* For example, in Open Records Decision No. 619, we found that the release of the identity of the employer and the nature and date of the alleged violations would not implicitly disclose the employees' identities because the employer at issue employed a large workforce. *Id.* Thus, what implicitly identifies an employee will depend on the specific facts of each case, and the information will be considered confidential only where those facts are sufficient to demonstrate that the information could implicitly identify an employee. *See generally id.*

You contend that releasing all of the data elements here could implicitly identify injured employees in some circumstances. Specifically, you assert that releasing the identity of the health care facility could allow an employee's identity to be known in small communities where the incident causing the injury is already known. You explain that in areas that have only one hospital, "the identity of the hospital and admission date, together with information from a newspaper article reporting about a job-related incident resulting in injury, could enable correlation of particular bills with the identity of an injured employee in violation of Texas Labor Code § 402.083." Additionally, you contend that the commission receives numerous requests for data from the database in question that cover similar periods of time, thus making it more probable that different data elements could be combined to identify an injured employee.

However, the requestor asserts that the commission's claim that the requested data could implicitly reveal an injured employee's identity "is vague and unsubstantiated by example or logic." We agree that the commission has failed to demonstrate that health care facility information would be implicitly identifying of an injured employee in any specific case. Although you have demonstrated a general concern that releasing facility identities could be identifying depending on the circumstances surrounding the request and the particular incident, you also state that "the Commission is not aware of a specific case in which an injured employee's identity has been revealed by release of hospital facility identifiers" and you admit that "it would be a difficult task to identify the particular records where the risk of disclosing confidential claim file information is the highest." Thus, we conclude that the commission has failed to demonstrate how the release of any of the requested data could implicitly identify any employee in any specific case. Open Records Decision No. 619 at 10 (1993); *see* Gov't Code § 552.301(e) (government body bears burden of supplying arguments); *cf. A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995) (in determining whether information is confidential, government body cannot inquire into motives of requestor). The possibility that an individual can use information in combination

with other public information to deduce confidential information is insufficient to establish the confidentiality of the information. *See A & T Consultants*, 904 S.W.2d at 676. Moreover, a requestor's use of requested information is an inappropriate and prohibited consideration under the Public Information Act. Gov't Code §§ 552.222, .223. Consequently, the commission must release the requested information in its entirety.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 175989

Enc: Submitted documents

c: Mr. Ronald T. Luke
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