



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2004

Ms. Shannon G. Marty  
Assistant General Counsel  
Texas Workers' Compensation Commission  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744

OR2004-4785

Dear Ms. Marty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203252.

The Texas Workers' Compensation Commission (the "commission") received a request for five categories of information relating to complaints filed against the requestor and four other specified individuals. You claim that some of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. You indicate that the commission will provide the requestor with any other responsive information that exists.<sup>1</sup> We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we note that the commission acknowledges that it has not complied with the procedural requirements of section 552.301 of the Government Code in requesting its decision from us regarding the requested information at issue. *See* Gov't Code § 552.301.

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<sup>1</sup> We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

The commission's delay in this matter results in the presumption that the requested information at issue is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome the presumption that the requested information at issue is now presumed public, the commission must provide us with a compelling reason why the requested information at issue should not be disclosed to the requestor. *See Hancock*, 797 S.W.2d at 381. Because the applicability of section 552.101 of the Government Code can provide such a compelling reason, we will address the commission's claim under this exception to disclosure.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code.<sup>2</sup> 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." Labor Code § 402.083(a). We note that 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). We also note that prior decisions of this office have found that information revealing the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is, thus, excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code.

We have also determined that whether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis. *See id.* This office has previously concluded that the legislature, in enacting section 402.083, did not intend to except from disclosure the identities of employers as a matter of law. *See id.* Rather, identities of employers are protected from disclosure by section 402.083 only when a determination is made, based on the facts of the particular case, that the release of the employer's identity would implicitly disclose the identity of the injured employee. *See id.* This office has further indicated that the determination of whether the release of the employer's identity could implicitly disclose an injured employee's identity can depend on the size of the employer's workforce. *See id.* Another significant factor in this determination is the extent to which the employee's position with the employer is revealed by the information at issue. 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.*

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<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

You state that the requestor is a former Benefit Review Officer (“BRO”) for the commission. You also state that, as such, the requestor is familiar with the injured workers, the nature of their injuries, their dates of injury, their employers, and which insurance carriers handle their claims. You further state that, because the requestor is familiar with these claims, the release of any of the information that you have highlighted within the submitted documents could reveal to the requestor the identity of the injured worker. Finally, you assert that the requestor would also be familiar with his docket as a BRO and may be able to determine the identity of an injured worker by a review of his calendar. Based on your arguments and our review of the submitted information, we find in this instance that you have adequately demonstrated that the information that you have highlighted within the submitted documents constitutes information in or derived from a claim file that explicitly or implicitly discloses the identities of claimants that is made confidential under section 402.083. Accordingly, we conclude that the commission must withhold the portions of the submitted information that are highlighted pursuant to section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. However, the commission must release the remaining submitted 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).

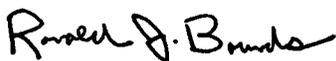
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 203252

Enc. Submitted documents

c: Mr. Cordell Marshall  
P. O. Box 62543  
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(w/o enclosures)