



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 4, 2004

Ms. Ylise Y. Janssen  
Senior School Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2004-6587

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 206414.

The Austin Independent School District (the "district") received a request for information concerning a district employee, including health records and worker's compensation claim information. You state that the district will release some of the requested information to the requestor. You claim that the remaining 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 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Title I of the Americans with Disabilities Act of 1990 (the "ADA") 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. 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 or her job, also is to be treated as a confidential medical record. *See* 42 U.S.C. §§ 12101 *et seq.*; 29 C.F.R. § 1630.14(c); Open Records Decision No. 641 (1996). Furthermore, the federal 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). We have marked information that the district must withhold under section 552.101 in conjunction with the ADA.

The city also raises section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code for information you have labeled Exhibit C. This section pertains to records of the Texas Workers' Compensation Commission (the "TWCC") and provides in part:

- (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.

Labor Code § 402.083(a). Section 402.083(a) makes information held in TWCC's claim files confidential. *See* Open Records Decision No. 619 (1993). Section 402.086 of the Labor Code essentially transfers this confidentiality to information that other parties obtain from TWCC files. Section 402.086(a) provides as follows:

- (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.

Labor Code § 402.086(a). 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 TWCC), but did not protect information regarding workers compensation claims that the governmental body did not receive from the TWCC. You inform us that the information contained in Exhibit C was obtained from TWCC claim files. Based on your representation and our review of that information, we agree that it is confidential under sections 402.083 and 402.086 of the Labor Code. Therefore, that information, which we have marked, must be withheld under section 552.101 of the Government Code.<sup>1</sup>

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with the ADA, as well as the information we have marked under section 552.101 in conjunction with sections 402.083 and 402.086 of the Labor Code.

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<sup>1</sup>We note that you have included information in Exhibit B that is also confidential under sections 402.083 and 402.086 of the Labor Code and that must be withheld under section 552.101. We have marked this information accordingly.

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,

A handwritten signature in cursive script that reads "Cary Grace". The signature is written in black ink and extends across the width of the page.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/seg

Ref: ID# 206414

Enc. Submitted documents

c: Ms. Velva L. Price  
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(w/o enclosures)