



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2004

Mr. Richard J. McGillivray
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100, MS-4D
Austin, Texas 78744

OR2004-8897

Dear Mr. McGillivray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211115.

The Texas Workers' Compensation Commission (the "commission") received a request for any and all letters and documents of resolution concerning complaints filed by the requestor in association with the requestor's workers' compensation claim. You assert that the requested information is not subject to the Public Information Act (the "Act"). Alternatively, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. Section 402.092(a) of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances.¹ Further, section 402.092(b) provides that the "[c]ommission investigation files are not open records for purposes of [the Public

¹ The four limited circumstances are: (1) in a criminal proceeding; (2) in a hearing conducted by the commission; (3) on a judicial determination of good cause; or (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

Information Act].” “Investigative file” is defined as “any information compiled or maintained by the commission with respect to a commission investigation authorized by law.” Labor Code § 402.092(d).

The Act applies to “public information,” defined as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. . . by a governmental body [.]” Gov’t Code § 552.002(a)(1). You assert that section 402.092(b) “remove[s] Commission investigation files from the purview of the [Act],” and that it “permits the Commission to withhold investigation files whenever a member of the public requests an investigation file, without first seeking a decision. . . pursuant to Chapter 552 of the Texas Government Code.” In this instance, we note that subsections 402.092(a) and (b) were passed into law at the same time.² In order to give section 402.092 of the Labor Code effect, subsections (a) and (b) must be read together. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (“To be sure, a court must presume that the Legislature intends an entire statute to be effective and that a just and reasonable result is intended.”). Subsection 402.092(b) does not exempt the investigation files from the Act, but rather states that the files are “not open records,” that is, they are closed records, not subject to required public disclosure under the Act. Thus, the effect of subsection (b) is not to remove the investigation files from the Act, but rather to pronounce them closed to the public. Accordingly, we find that, taken together, subsections 402.092(a) and (b) make information in the commission’s investigation files confidential under section 402.092 of the Labor Code as encompassed by section 552.101 of the Government Code. *See generally* Gov’t Code § 311.025(b) (amendments to same statute enacted at same session of legislature shall be harmonized so that effect may be given to each). Thus, because such files are subject to the Act, we will address your remaining arguments regarding the nature of the submitted information.

You contend that the records at issue consist of information in investigation files that is confidential pursuant to sections 402.092 and 414.005 of the Labor Code. We note that the submitted investigation file includes information from a claim file. Section 402.092(c) provides that information in an investigation file that is information in or derived from a claim file is governed by the confidentiality provisions of the Labor Code relating to claim file information. *Labor Code* § 402.092(c). Accordingly, we will address the applicability of section 402.083 of the Labor Code to this information.

² *See* Act of June 16, 1995, 74th Leg., R.S., ch. 980, § 1.19, 1995 Tex. Gen. Laws 4916.

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.” 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). 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 therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Only in those cases where release of the employer’s identity would reveal the claimant’s identity may the identity of an employer be withheld. Thus, to the extent that the submitted information consists of claim file information that implicitly or explicitly identifies claimants, the commission must withhold the information under section 552.101 in conjunction with section 402.083 of the Labor Code.

We turn now to your arguments regarding the remaining submitted information. Section 414.005 of the Labor Code provides that the commission’s compliance and practices division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers’ Compensation Act (the “TWCA”) and commission administrative rules. *See* Labor Code § 414.005; *see also id.* §§ 414.001, .002. You inform us that the information at issue relates to possible violations of the TWCA, commission rules, and the Texas Penal Code. You state that the commission maintains investigation files pursuant to section 414.005. Furthermore, you state that the remaining submitted information is contained in such an investigation file, and is confidential under section 402.092. You assert that subsections 402.092(e) and (f) of the Labor Code are not applicable to the investigation file at issue.³

Based on your representations and our review, we conclude that the remaining submitted information consists of investigative materials that are subject to section 402.092. A release

³ These subsections provide:

(e) The commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

- (1) the complaint was groundless or made in bad faith; or
- (2) the complaint lacks any basis in fact or evidence; or
- (3) the complaint is frivolous; or
- (4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

in response to the present request would not constitute a disclosure under one of the four permissible circumstances enumerated in section 402.092(a). Thus, the remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.

In summary, to the extent the submitted information consists of claim file information that implicitly or explicitly identifies claimants, the commission must withhold such information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. The remainder of the submitted information must be withheld under section 552.101 in conjunction with section 402.092 of the Labor Code.⁴

Although you ask this office to issue a previous determination regarding this type of information, we decline to do so at this time. 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).

⁴ As our ruling is dispositive, we do not address your remaining arguments.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 211115

Enc. Submitted documents

c: Mr. Lawrence Neloms
3902 Cedar Valley Drive
Missouri City, Texas 77459
(w/o enclosures)