



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2004

Ms. A. Kaylene Ray
Manager, Legal Services
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100, MS-4D
Austin, Texas 78744

OR2004-9096

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211452.

The Texas Workers Compensation Commission (the "commission") received a request for the complete claim file of a named workers' compensation claimant. You assert that this request for information is not governed by the Public Information Act (the "Act"), chapter 552 of the Government Code. You also claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

Initially, we address your contention that the Act is not applicable to this request for information. In this regard, we first note that the submitted claim file information is public information that is subject to disclosure under the Act. *See* Labor Code § 401.021(4) (providing that "Chapter 552, Government Code, applies to a record of the commission"); *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 676 (Tex. 1976) (definition of "public information" under statutory predecessor to Act encompassed claim information held by commission's predecessor agency); Open Records Decision No. 619 at 2 n.4 (1993) (rejecting argument that statutory predecessor to Act was inapplicable to claim file information). You assert, however, that "[t]he request was not filed pursuant to the . . . Act [but] was handled in accordance with Section 402.084 of the Labor Code." Section 402.084 provides in relevant part:

(a) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the commission;

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release *on a form prescribed by the commission for this purpose* and provides all required information.

Labor Code § 402.084(a) (emphasis added); *see also id* § 402.084(b) (listing persons and entities to which commission may release claim information).

You state that this request for information was made on the commission's Form TWCC-153, which you indicate was prescribed by the commission under section 402.084(a)(2). You state that the commission receives thousands of TWCC Form 153 requests annually and that such requests are handled under section 402.084 rather than under the Act. We note, however, that section 402.084(a)(2) does not specify a means for the commission to handle requests for public information outside the Act or to deny requests for information without complying with the procedural requirements of the Act. *See Gov't Code 552.301(a)* (governmental body that receives written request for information that it wishes to withhold from public and considers to be within exception to disclosure under Gov't Code ch. 552 subch. C must ask attorney general for decision about whether information is within exception if there has been no previous determination about whether information falls within exception); Open Records Decision No. 673 at 1 (2001) (*Gov't Code § 552.301(a)* prescribes general requirement that governmental body ask attorney general whether requested information is excepted from required disclosure whenever governmental body seeks to withhold information). Rather, section 402.084(a)(2) merely provides for the commission to develop a form to be used by persons and entities that qualify under section 402.084 to obtain information that is otherwise subject to section 402.083 of the Labor Code.¹

¹Section 402.083 provides in relevant part 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); *see also* Open Records Decision No. 619 at 10 (1993) (Labor Code § 402.083(a) generally makes confidential information that explicitly or implicitly identifies workers' compensation claimants).

Accordingly, we conclude that requests for information made to the commission under section 402.084(a)(2) on TWCC Form 153 are requests for public information that trigger the requirements of the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974) (Act does not require that request for information refer to Act or be addressed to officer for public information; as hyper-technical reading of Act would not effectuate its purpose, any written communication that can reasonably be judged to be request for information qualifies as request under Act); *see also* Attorney General Opinion JM-122 at 2 (1983) (House of Representatives could not remove itself, under its rule-making authority, from scope of statutory predecessor to Act); Open Records Decision No. 651 at 4 (1997) (governmental body may not promulgate rules or policy exempting information from reach of Act unless it has explicit statutory authority to do so). Consequently, we find that the Act is applicable to the present request for claim file information.

Next, we address the commission's obligations under section 552.301 of the Act. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 provides that if a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information.

In this instance, the commission has failed to request a decision within the ten-business-day period prescribed by section 552.301. Likewise, the commission has not timely complied with section 552.301(e) in requesting this decision. Therefore, the submitted information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As the commission's claim under section 552.101 can provide a compelling reason for non-disclosure, we will consider your arguments.

Section 552.101 excepts from 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 is made confidential by statute. 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 generally 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.” *See* Open Records Decision No. 619 at 10 (1993). We also have stated, however, that “[w]hether specific information implicitly discloses the identify of a particular employee must be determined on a case-by-case basis.” *Id.* In this instance, the requestor seeks access to the entire claim file of a named workers’ compensation claimant. You do not inform us, and it does not otherwise appear to this office, that the requestor is one of the persons or entities to which the commission is permitted to release claim file information under sections 402.084 or 402.085 of the Labor Code.² We therefore conclude that the commission must withhold the submitted information from the requestor under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code as information made confidential by law.

Furthermore, this letter ruling shall serve as a previous determination under section 552.301 of the Act that claim file information relating to a workers’ compensation claimant who is identified by the requestor is excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code, unless the commission is authorized to release the information under sections 402.084 or 402.085 of the Labor Code. *See* Gov’t Code § 552.301(a), (f); Open Records Decision No. 673 (2001). This previous determination is not applicable, however, to information to which the requestor may have a right of access under another provision of law. *See, e.g.*, Occ. Code § 159.002 *et seq.* (medical records); *id.* § 201.402 *et seq.* (chiropractic records); *id.* § 258.102 *et seq.* (dental records); Health & Safety Code § 611.002 *et seq.* (mental health records). So long as the elements of law, fact, and circumstances on which this ruling is based do not change so as to no longer support the findings set forth above, the commission need not request a decision under the Act again with regard to the type of information that is the subject of this ruling. *Id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. 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,

²Section 402.085 provides for the release of claim file information for certain specified official purposes. *See* Labor Code § 402.085(a)-(b).

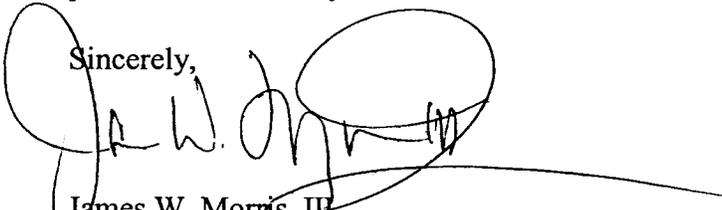
then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 of 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,



James W. Morris, III
Assistant Attorney General
Open Records Division
JWM/sdk

Ref: ID# 211452

Enc: Submitted documents

c: Mr. Clint Rosenthal
Strasburger & Price LLP
1401 McKinney Suite 2200
Houston, Texas 77010
(w/o enclosures)