



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2005

Mr. Dean L. Krohn  
Assistant General Counsel  
Legal Services Division  
Texas Workers' Compensation Commission  
7551 Metro Center Drive, Suite 100, MS-09  
Austin, Texas 78744-1609

OR2005-01938

Dear Mr. Krohn:

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# 219717.

The Texas Worker's Compensation Commission (the "commission") received a request for information pertaining to a certain doctor. You state that some of the requested information will be released, but seek to withhold the submitted information under sections 552.101, 552.107, 552.111, and 552.137 of the Government Code, Rule 192.5 of the Texas Rules of Civil Procedure, and Rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although the commission also claims that the submitted information is excepted from disclosure under section 552.022 of the Government Code, this section is not an exception to disclosure, but is instead an illustrative list of types of information that generally cannot be withheld unless confidential by law. *See Gov't Code § 552.022.*

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. We understand that the submitted documents include information from a claim file. 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." 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. Therefore, any information that consists of claim file information that implicitly or explicitly identifies claimants is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses section 402.092 of the Labor Code, which provides in relevant part the following:

- (a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except:
  - (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.
- (b) Commission investigation files are not open records for purposes of Chapter 552, Government Code.
- (c) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

Lab. Code § 402.092(a)-(c). For purposes of section 402.092, an investigation file is “any information compiled or maintained by the commission with respect to a commission investigation authorized by law.” *Id.* § 402.092(d).

You assert that the remaining information at issue consists of investigation files maintained by the commission pursuant to sections 413.002, 413.0511, and 413.0512 of the Labor Code. Section 413.002 authorizes the commission to maintain a division of medical review to ensure compliance with the rules and to implement chapter 413 under the policies adopted by the commission. Lab. Code § 413.002(a). Section 513.0511 generally allows the commission to employ or contract with a medical advisor who will make recommendations to the commission regarding the adoption of rules pursuant to various provisions of chapters 408 and 413 of the Government Code. *See id.* § 513.0511(b). Section 413.0512 establishes a medical quality review panel of health care providers to assist the medical advisor in performing the duties required under section 413.0511 of the Labor Code. *Id.* §§ 413.0511, 413.0512(a). Section 413.0513 of the Labor Code provides that “[i]nformation collected, assembled, or maintained by or on behalf of the commission under Section 413.0511 or 413.0512 constitutes an investigation file for purposes of Section 402.092 and may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section.” *Id.* § 413.0513(a).

Based on your representation that the commission maintains the remaining information at issue under sections 413.002, 413.0511, and 413.0512 of the Labor Code, we conclude that this information is confidential under section 402.092, and the commission may not release it unless one of the listed exceptions applies. *Id.* § 402.092(a). You inform us that none of the exceptions found in section 402.092, 413.0511(b)(6), 413.0513(b), or 413.0514 of the Labor Code applies in this instance. We therefore agree that the commission must withhold the remaining submitted information 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 of the Government Code in conjunction with section 402.092 of the Labor Code.<sup>3</sup>

Furthermore, this letter ruling shall serve as a previous determination under section 552.301 of the Government Code that information in a commission investigative file maintained under section 413.002, 413.0511, or 413.0512 of the Labor Code is excepted from public disclosure under section 552.101 of the Government Code in conjunction with

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

section 402.092 of the Labor Code, unless the information either is subject to the release provisions of section 402.092, 413.0511, 413.0513, or 413.0514 of the Labor Code, or is claim file information subject to subsection 402.092(c) of the Labor Code. *See* Gov't Code § 552.301(a), (f); Open Records Decision No. 673 (2001). In addition, this previous determination is also not applicable to information to which the requestor may have a right of access under any other 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. *See id.*

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 219717

Enc. Submitted documents

c: Mr. Scott Bradley  
Watson, Caraway, Harrington, Nelson, Midkif & Lunningham, LLP  
307 West 7<sup>th</sup> Street, Suite 1000  
Fort Worth, Texas 76102  
(w/o enclosures)