



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2005

Ms. Cynthia Villarreal-Reyna
Section Chief
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2005-10564

Dear Ms. Villarreal-Reyna:

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# 236840.

The Texas Department of Insurance, Division of Workers' Compensation¹ (the "department") received a request for six categories of information related to an investigation file and complaint information associated with Medical Quality Review #05-QR-017. You state that the department has no documents responsive to category 5 of the request.² You claim that the remainder of the 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, a portion of which consists of a representative sample.³

¹All reference to the "commission" in Texas Labor Code provisions cited herein reference the Texas Department of Insurance, Division of Workers' Compensation as established by House Bill 7, 79th Texas Legislature, R.S. (2005).

²Chapter 552 of the Government Code does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

³We 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.

We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that the requestor claims that the department has previously released all or some of the information that the department seeks to withhold under section 552.101 of the Government Code. Information that has been previously released may not be withheld later unless it is confidential. *See* Gov't Code § 552.007 (voluntary disclosure of certain information is allowed, unless disclosure is expressly prohibited by law or the information is confidential under law); *see also* Open Records Decision No. 400 (1983) (prohibition against selective disclosure does not apply when governmental body releases confidential information to the public). Thus, even if the department previously released the information at issue to the public, the department would nevertheless be required to withhold the information in this instance if it were found to be confidential. Therefore, we will address the department's arguments under section 552.101 with respect to this information.

Next, the department states that the requested information, with the exception of claim file information, is the subject of a previous determination issued to the department under section 552.301 of the Act. *See* Gov't Code § 552.301(a). You seek to withhold investigation file information maintained under section 413.002, 413.0511, or 413.0512 of the Labor Code under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. In Open Records Letter No. 2005-01938, we granted the department a previous determination that information in a 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 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 Open Records Letter No. 2005-01938, we state that 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). You do not inform us of any change in the law, facts, and circumstances on which the prior ruling is based. We therefore conclude that you must withhold the investigation file information you have marked that is maintained under section 413.002, 413.0511, or 413.0512 of the Labor Code under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code and in accordance with our decision in Open Records Letter No. 2005-01938. *See also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This

section encompasses information made confidential by other statutes. Some of the records at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Although the requestor claims a right of access pursuant to section 159.004(7), this provision allows for the "disclosure of confidential information by a physician" under certain circumstances, and not by the department. Thus, the department may only release the records at issue as provided under the MPA.

Next, 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.

The requestor claims a right of access to the claim file information pursuant to section 408.0041 of the Labor Code. However, we note that this section is not applicable in this instance. The department informs us that none of the claim file information at issue here is subject to release under section 402.084 or section 402.085 of the Labor Code.

Therefore, the claimant-identifying information is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code.

In summary, you must withhold the investigation file information you have marked that is maintained under section 413.002, 413.0511, or 413.0512 of the Labor Code under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code and in accordance with our decision in Open Records Letter No. 2005-01938. Medical records may be released only as provided under the MPA. The claimant-identifying information is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code. The remaining information must be released to the requestor.

You also ask this office to issue a previous determination permitting the department to withhold embedded claim file information without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. 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, 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 Office of the Attorney General 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. 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 Forrest
Assistant Attorney General
Open Records Division

JF/jpa

Ref: ID# 236840

Enc. Submitted documents

c: David Swanson
Stone Loughlin & Swanson, LLP
P.O. Box 30111
Austin, Texas 78755
(w/o enclosures)