



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2008

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal Services Division
Texas Department of Insurance
P. O. Box 149104, Mail Code 110-1A
Austin, Texas 78714-9104

OR2008-05542

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#308335.

The Texas Department of Insurance, Division of Worker's Compensation (the "division") received a request for the complete claim file of a worker's compensation claimant. You assert that this request for information is not governed by the Act. In the alternative, you 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. You contend that a request for claimant information on a DWC Form 153 is not a request for information under the Act. In this regard, we first note that as we have previously stated 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 workers' compensation record of the division"); Open Records Decision No. 619 at 2 n.4 (1993) (rejecting argument that statutory predecessor to Act was inapplicable to claim file information). You argue that "the statutes in the Labor Code regarding claim file information establish the requirements for access to a specific subset of information held by [the division] and prevail over the general access provisions of the Public Information Act." In support of your arguments, you cite to Open Records Decision No. 598 (1991), which addressed the confidentiality of medical records. As you note, the decision stated that "statutes governing access to a specific subset of information held by a governmental body prevail over the generally applicable Open Records Act." We note that this decision did not make the Act inapplicable to the information at issue, but rather discussed right of access issues.

You state that the division "is authorized to prescribe a form for the request and release of confidential claim file information." Section 402.084 provides in relevant part:

(a) The division 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 division;

(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 division 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 division may release claim information).

You state that this request for information was made on the division's DWC Form 153, which you indicate was prescribed by the division under section 402.084(a)(2). We note, however, that section 402.084(a)(2) does not specify a means for the division 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 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) (section 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 division 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 division except as provided by this subtitle or other law." 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, as we have previously concluded, requests for information made to the division under section 402.084(a)(2) on a DWC 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.

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 division except as provided by this subtitle or other law.” 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 worker’s compensation claimant. In the instant case you state, and provide documentation showing, that the requestor is not eligible to receive the requested information under section 402.084(b) of the Labor Code because he failed to establish that he meets any of the listed requirements for disclosure. Further, you do not inform us and it does not otherwise appear that the requestor is one of the persons or entities to which the division is permitted to release claim file information under section 402.085 of the Labor Code.² We therefore conclude that the division must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code as information made confidential by law.

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

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

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Nancy E. Griffiths
Assistant Attorney General
Open Records Division

NEG/jb

Ref: ID# 308335

Enc. Submitted documents

c: Mr. Ken Tekell, Jr.
1221 McKinney Street, Suite 4300
Houston, Texas 77010
(w/o enclosures)
