



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2009

Ms. Elaine M. Chaney
Director of Legal Services
Office of Injured Employee Counsel
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

OR2009-00372

Dear Ms. Chaney:

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# 331959.

The Office of Injured Employee Counsel (the "counsel") received a request for all information relating to a specified worker's compensation claim. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, we note the requestor states a portion of the requested information is subject to rule 107 of the Texas Rules of Evidence. We note chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Open Records Decision No. 647 at 2 (1996) (section 552.101 does not encompass discovery privileges). Further, this office generally does not address discovery and evidentiary rules that may or may not be applicable to information submitted to our office by a governmental body. *See* Open Records Decision No. 416 (1984) (finding that even if evidentiary rule specified that certain information may not be publicly released during trial, it would have no effect on disclosability under Act). What information can or cannot be introduced during trial and what information can or cannot be released to the public under

the Act are two entirely different issues. *Id.* at 7. Accordingly, we do not address the applicability of rule 107 to the submitted 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 other statutes make confidential. You contend that the submitted information is confidential under section 404.111 of the Labor Code, which provides in part:

(a) The [counsel] may access information from an executive agency that is otherwise confidential under a law of this state if that information is necessary for the performance of the duties of the [counsel], including information made confidential under:

...

(4) Sections 402.083, 402.091, and 402.092 of [the Labor Code].

...

(c) The [counsel] may not make public any confidential information provided to the [counsel] under this chapter[.]

(d) Information collected or used by the [counsel] under this chapter is subject to the confidentiality provisions and criminal penalties of:

...

(4) Section 402.091 of [the Labor Code].

(e) Information on health care providers and injured employees that is in the possession of the [counsel], and any compilation, report, or analysis produced from the information that identifies providers and injured employees is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

Labor Code § 404.111(a), (c), (d), (e); *see also id.* § 404.002 (establishing the counsel). Section 402.083 of the Labor Code provides in part that “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except

as provided by this subtitle.” *Id.* § 402.083(a). Section 402.091 of the Labor Code makes it a criminal offense to “knowingly, intentionally, or recklessly publish[], disclose[], or distribute[] information that is confidential under [section 402.083] to a person not authorized to receive the information directly from the division.” *Id.* § 402.091(a).

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 6 (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 confidential under section 402.083. 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.

You contend the counsel must withhold the entirety of the submitted information under section 404.111 because the requestor has requested information pertaining to a named individual’s worker’s compensation claim. We agree. Because the requestor only seeks information from a named individual’s worker’s compensation claim file, release of any information obtained from the division would disclose the identity of a worker’s compensation claimant. Therefore, the counsel must withhold all of the submitted information, which consists of the claim information made confidential by section 402.083 that it obtained from the division and the injured employee’s information in its possession, under section 552.101 of the Government Code in conjunction with subsections 404.111(c) and (e) of the Labor Code.¹

The requestor states that as the representative of the insurance carrier in the instant claim, he has a right of access to the information that is subject section 404.111 pursuant to section 402.084 of the Labor Code. 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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

(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.

(b) Information on a claim may be released as provided Subsection (a) to:

...

(4) the insurance carrier[.]

Labor Code § 402.084(a), (b)(4). However, section 402.084 applies to the division. Section 404.002(b) of the Labor Code states the counsel is independent of the division. *See id.* § 404.002(b). Thus, the counsel is not subject to the release provisions of section 402.084. Accordingly, the counsel need not release any portion of the submitted information in accordance with section 402.084 of the Labor Code.

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 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). If the governmental body does not file suit over 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).

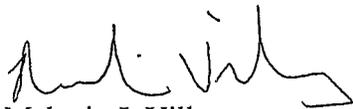
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/eeg

Ref: ID# 331959

Enc. Submitted documents

c: Requestor
(w/o enclosures)