



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2009

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

OR2009-02400

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# 335654 (TDI #84670).

The Texas Department of Insurance (the "department") received a request for "a list of all businesses in Texas that have had workplace fatalities and/or that have had an above average incident rate." You claim 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 representative sample of information.<sup>1</sup>

Initially, we note that you have only submitted information responsive to the request for a list of all businesses in Texas that have had workplace fatalities. To the extent any information responsive to the remainder of the request existed on the date the department received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.301(a),

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<sup>1</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.

.302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note, and you acknowledge, the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. *See id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument against disclosure of the requested information.

Section 552.101 of the Government Code excepts from 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. 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." *See* Labor Code § 402.083. 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 excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code.<sup>2</sup> 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 claim that the release of a list of businesses in Texas at which fatal accidents have occurred would implicitly reveal the identities of employees who have filed workers' compensation claims. You have submitted internet search results demonstrating that, in at least three instances, "basic internet searches" using the name of an employer revealed the name of the injured employees. However, we are unable to determine whether release of the identity of the employer of a claimant would implicitly identify the claimant in every case. Therefore, we conclude that the identity of an employer must be withheld only in those cases

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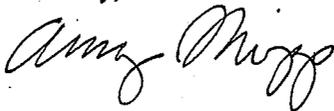
<sup>2</sup>The "commission" refers to the predecessor agency of the Texas Department of Insurance, Division of Workers' Compensation, which was established under House Bill 7, 79<sup>th</sup> Legislature, R.S. (2005).

where release of an employer's identity would reveal a claimant's identity. Accordingly, to the extent an employer's identity would reveal a claimant's identity, it must be withheld under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. To the extent an employer's identity would not reveal a claimant's identity, the employer's identity may not be withheld under section 552.101 in conjunction with section 402.083 of the Labor Code and must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/jb

Ref: ID# 335654

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

c: Mr. Jorge Pena  
c/o Ms. Cynthia Villarreal-Reyna  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104  
(w/o enclosures)