



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2009

Ms. Elaine M. Chaney  
Director of Legal Services  
Office of Injured Employee Counsel  
7551 Metro Center Drive, Suite 100, MS-50  
Austin, Texas 78744

OR2009-05994

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# 341818.

The Office of Injured Employee Counsel (the "counsel") received a request for the counsel's file relating to a specified worker's compensation claim. You claim that 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.

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,

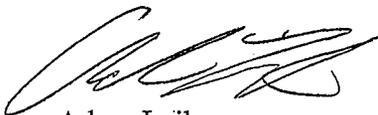
under section 552.101 of the Government Code in conjunction with subsections 404.111(c) and (e) of the Labor Code.

Next, you note, and we acknowledge, that the requestor is the attorney for the injured employee at issue in the submitted information. Accordingly, you assert that the requestor may have a special right of access to the otherwise confidential information under section 552.023 of the Government Code. This section provides in part that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.” Gov’t Code § 552.023(a). Thus, information that relates to a person may not be withheld from that person, or his or her authorized representative, on the basis of that person’s right to privacy. *See also* Gov’t Code § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself). However, a requestor does not have a right of access under section 552.023 if the requested information is protected from public disclosure by a law that is not based exclusively on the requestor’s own privacy interests. *See* Gov’t Code § 552.023(b) (governmental body may assert as grounds for denial of access to information other provisions of Act or other law not intended to protect person’s privacy interests). Because section 404.111 of the Labor Code is not based solely on an individual’s privacy interests, the requestor does not have a right of access to information made confidential by section 404.111.

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/jb

Ref: ID# 341818

Enc. Submitted documents

c: Requestor  
(w/o enclosures)