



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2010

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal and Regulatory Affairs, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2010-01515

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# 368847 (TDI# 97964).

The Texas Department of Insurance (the "department") received a request for all petitions in which the employee was assisted by an ombudsman at the administrative level in which the employee is the defendant on judicial review. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the present request for information is, in part, a standing request. It is implicit in several provisions of the Act that the Act applies only to information already in existence at the time a request is received by a governmental body. *See id.* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by this request consists of documents the department maintained or had a right of access to as of the

date that it received the instant request for information, and the department is not required to release any additional information in response to the request.

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. Section 552.101 encompasses section 402.083 of the Labor Code, which provides, “[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] 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.¹ 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 state some of the submitted information derived from claim files implicitly or explicitly discloses the identity of employees who have filed workers’ compensation claims. Further, you state the requestor is not one of the persons or entities to which the department is permitted to release claim file information. Based on your representation and our review, the information we have marked implicitly or explicitly identifies workers’ compensation claimants. Therefore, the information we have marked is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code. However, you have failed to show the remaining information you have marked either implicitly or explicitly identifies an employee who has filed a workers’ compensation claim. Therefore, the remaining information you have marked is not confidential under section 402.083 of the Labor Code and may not be withheld under section 552.101 of the Government Code. As you raise no further arguments against disclosure of the remaining information, it 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, or call the Office of the Attorney General’s Open Government Hotline, toll free,

¹The “commission” refers to the predecessor agency of the Texas Department of Insurance, Division of Workers’ Compensation, which was established under House Bill 7, 79th Legislature, R.S. (2005).

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, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan", with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 368847

Enc. Submitted documents

c: Requestor
(w/o enclosures)