



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2010

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

OR2010-14465

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# 394397 (TDI #105991).

The Texas Department of Insurance, Division of Worker's Compensation (the "division") received a request for all documents regarding the investigation conducted in regards to the requestor's client. You inform us the division is withholding some of the requested information under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code pursuant to the previous determination issued in Open Records Letter No. 2005-01938 (2005).<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under

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<sup>1</sup>Open Records Letter No. 2005-01938 authorizes the division to withhold under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code, without the necessity of requesting a decision under the Act, information in a division investigative file maintained under section 413.002, section 413.0511, or section 413.0512 of the Labor Code, unless the information either is subject to the release provisions of section 402.092, section 413.0511, section 413.0513, or section 413.0514 of the Labor Code, or is claim file information subject to subsection 402.092(c) of the Labor Code. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure.<sup>2</sup> We have considered your arguments and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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 protected by other statutes. Section 402.092 of the Labor Code provides confidentiality and exceptions to confidentiality for the investigation files of the division. Section 402.092 provides in relevant part:

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the division;
- (3) on a judicial determination of good cause; or
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.
- (5) to an insurance carrier if the investigation file relates directly to a felony regarding workers’ compensation or to a claim in which restitution is required to be paid to the insurance carrier.

(c) Division investigation files are not open records for purposes of [the Act].

(d) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

Lab. Code § 402.092(b)-(d). For purposes of section 402.092, an investigation file is “any information compiled or maintained by the division with respect to a division investigation under this subtitle or other workers’ compensation law[, but] does not include information or material acquired by the division that is relevant to an investigation by the insurance fraud unit and subject to Section 701.151, Insurance Code.” *Id.* § 402.092(a).

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<sup>2</sup>We note in your brief dated July 28, 2010, you withdrew your remaining assertions under the Act.

You assert the submitted enforcement file contains information from the Office of the Medical Advisor investigations of individual health care providers authorized by the Texas Workers Compensation Act that were referred to the enforcement division. Further you state this information is collected, assembled, and maintained by the division pursuant to sections 413.002, 413.0511, and 413.0512 of the Labor Code. You further state the submitted enforcement file is not a claim file subject to section 402.092(d) and none of the release provisions of section 402.092 apply. *See id.* § 402.092. Accordingly, we agree the submitted enforcement file is confidential under section 402.092.

In his request for information, the requestor argues that as the representative of the provider investigated by the division, he has a right of access to the submitted information pursuant to section 41.110 of title 28 of the Texas Administrative Code, which provides:

(a) The board's records shall be made available for inspection or duplication by applying in writing on a board-approved form to the custodian in Austin. The application must identify the document(s) to be disclosed, and the name and address of the applicant. All requests, including subpoenas, for confidential claim files must be accompanied by a statement of eligibility provided on a board-approved form. All applications for release of records must be approved by an authorized employee.

(b) Public records shall be made available for inspection or duplication pursuant to the provisions of the [Act].

(c) Confidential claim file records shall be made available for inspection or duplication under the following conditions:

(1) if a claim is open or pending before the board; on appeal to a court; or the subject matter of a subsequent suit where the carrier has a right to subrogation, and the requestor is:

(A) the claimant;[or]

(B) the claimant's attorney of record[.]

...

(2) if the requestor files the claimant's signed waiver of confidentiality on a board-approved form;

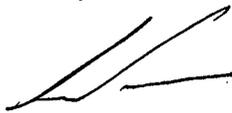
(3) if the claimant has been finally adjudicated to be a fraudulent claimant.

28 T.A.C. § 41.110; *see also id.* § 41.105(3) (defining “records” for purposes of section 41.110).<sup>3</sup> Section 41.101 of title 28 of the Texas Administrative Code provides the purpose of chapter 41, which governs inspection of division records, “is to ensure compliance with [the] Texas [Workers’ Compensation Act] and the [Act].” *Id.* § 41.101. Subsection 41.110(a) only describes the procedures an individual must follow when requesting records from the division and subsection 41.110(b) provides access to public records is governed by the Act. *See id.* § 41.110(a), (b). Neither subsection 41.110(a) or subsection 41.110(b) provides an individual with an automatic right of access to division records. Further, subsection 41.110(c) provides access to claim file information to certain individuals under certain conditions. *See id.* § 41.110(c). However, the division states the submitted information does not consist of claim file information. Thus, section 41.110(c) does not apply in this instance. Accordingly, we find the division must withhold the submitted enforcement file under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. As we are able to make this determination, we do not address your remaining arguments.

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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

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<sup>3</sup>The Texas Industrial Accident Board was renamed the Texas Workers’ Compensation Commission (the “commission”) by the 71<sup>st</sup> Legislature. *See* 28 T.A.C. § 41.1. The 79<sup>th</sup> Legislature transferred the commission’s powers and duties to the division. *See* Act of May 2005, 79th Leg., R.S., ch. 402, § 1, 2005 Tex. Gen. Laws 469, 469.

Ref: ID# 394397

Enc. Submitted documents

c: Requestor  
(w/o enclosures)