



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2011

Ms. Michelle M. Fraga
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, Fifteenth Floor
Houston, Texas 77002

OR2011-01465

Dear Ms. Fraga:

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# 407186 (C.A. File No. 10GEN2600).

The Office of Harris County Human Resources and Risk Management (the "county") received a request for an itemized account of all benefits paid to a named individual and to medical providers for a specified workers' compensation claim. You claim the submitted 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 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(a) of the Labor Code, which states "[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[.]" Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, information in the possession of the county that was not obtained from the

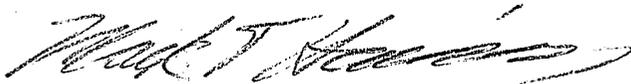
division may not be withheld on the basis of section 402.083(a). Although you assert the submitted information is confidential pursuant to section 402.083, you provide no representation, and the documents do not reflect, that the county received these records from the division. Therefore, you have failed to demonstrate the applicability of section 402.083 to the information at issue. Thus, the county may not withhold the submitted information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* Upon review, we find a portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the county must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further argument against disclosure, the county must release the remaining information.

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, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 407186

Enc. Submitted documents

c: Requestor
(w/o enclosures)