



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2011

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Legal and Regulatory Affairs
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2011-07442

Dear Mr. Waitt:

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# 418657 (TDI# 113494).

The Texas Department of Insurance (the "department") received a request for the names, addresses, telephone numbers, and related events or exposures associated with all workplace fatalities that have occurred in Texas construction or related industry for a specified time period. You claim that some of the responsive information is not subject to the Act. You also claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample information.¹

You state a portion of the responsive information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides "public information" consists of information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹We 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.

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information in a governmental body's physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Furthermore, the Act applies to information a governmental body does not physically possess if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987).

You state the department does not maintain the information at issue. Rather, you explain the Bureau of Labor Statistics ("BLS") collects and maintains the information at issue, but does not maintain it on behalf of the department. You have provided the agreement between the department and BLS. You state, and the submitted agreement reflects, the department does not have a contractual right of access to the information maintained by BLS. Thus, we determine the responsive information maintained by BLS is not public information for purposes of section 552.002 of the Government Code. Therefore, such information need not be provided in response to this 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. 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.² 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.

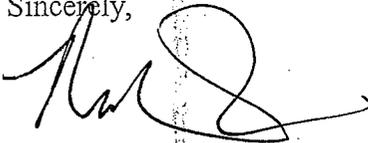
²The "commission" refers to the predecessor agency of the Texas Department of Insurance, Division of Workers' Compensation, which was established under House Bill 7, 79th Legislature, R.S. (2005).

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, in support of this argument, 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 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 418657

Enc. Submitted documents

cc: Requestor
(w/o enclosures)