



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2011

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

OR2011-10705

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# 424888.

The Office of Injured Employee Counsel (the "counsel") received a request for all information relating to a individual. 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 representative sample of information.¹

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) Except as otherwise provided by this section, 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 office, including information made confidential under Section 402.091.

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.

...

(e) The [counsel] may not make public any confidential information provided to the [counsel] under this chapter. . . . The [counsel] may not release, and an individual or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a health care provider or an injured employee; [or]

(2) reveals the zip code of an injured employee's primary residence[.]

(f) Information collected or used by the [counsel] under this chapter is subject to the confidentiality provisions and criminal penalties of Section 402.091.

(g) 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), (e)-(g); *see also id.* § 404.002 (establishing the counsel). 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 [subchapter E of chapter 402 of the Labor Code] to a person not authorized to receive the information directly from the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”).” *Id.* § 402.091(a). Section 402.083 of the Labor Code is part of subchapter E of chapter 402 and 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 except as provided by this subtitle or other law.” *Id.* § 402.083(a).

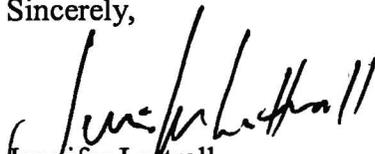
This office has interpreted section 402.083 to protect only that “information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers’ compensation claims.” Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found 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.

You also ask this office to issue a previous determination that would permit the counsel to withhold information under section 552.101 of the Government Code in conjunction with section 404.111 of the Labor Code without the necessity of again requesting a decision under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). We decline to issue such a decision at this time. This letter ruling is limited to the particular records 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 records 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 424888

Enc. Submitted documents

c: Requestor
(w/o enclosures)