



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2012

Ms. Cynthia Villarreal-Reyna
Director, Office of Agency Counsel
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2012-12185

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# 460937 (TDI# 127651).

The Texas Department of Insurance Division of Workers' Compensation (the "division") received a request for communications and documentation sent or received by division employees regarding a specified claim during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you state "[t]o the extent that the requestor meets the eligibility requirements in the Labor Code, [the division] will rely [on] the previous determination in [Open Records Letter No. 2004-9096 (2004)] to withhold responsive information." Open Records Letter No. 2004-9096 authorizes the division's predecessor to withhold, under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code, claim file

¹You inform us the division withdraws its claim under section 552.107 of the Government Code.

information relating to a workers' compensation claimant who is identified by the requestor. That ruling was based on finding the requestor was not eligible to receive the information at issue under section 402.084 of the Labor Code. *See* Lab. Code § 402.084(b) (list of parties to whom claim information may be released). In this instance, the requestor may be the representative of the employee who filed the specified claim, and thus may be eligible to receive the claim file information under section 402.084 of the Labor Code. Therefore, the circumstances in this instance differ from those in Open Records Letter No. 2004-9096, and the division may not rely on that ruling as a previous determination. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination). Accordingly, we will address your arguments under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code and under sections 552.103 and 552.111 of the Government Code.

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 is made confidential by statute. Section 402.083 of the Labor Code provides, "[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." Labor Code § 402.083(a). This office has interpreted section 402.083 to generally 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." *See* Open Records Decision No. 619 at 10 (1993). However, we also have stated, "[w]hether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis." *Id.* In this instance, the requestor seeks access to documentation and communications pertaining to the claim file of a named worker's compensation claimant. Thus, we conclude that section 402.083 is generally applicable to the submitted information in its entirety. In this instance, however, section 402.084 may apply because the requestor states he is the employee's legal representative. Accordingly, we will address the applicability of section 402.084.

Section 402.084 of the Labor Code provides, in relevant part,

(a) The division shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division;

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the division for this purpose and provides all required information.

(b) Information on a claim may be released as provided Subsection (a) to:

...

(2) the employee's or the legal beneficiary's representative[.]

Labor Code § 402.084(a), (b)(2). Whether the requestor would be qualified to receive the submitted confidential claimant information presents, in part, a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Thus, if the division determines the requestor is eligible to receive the submitted information under section 402.084 of the Labor Code, then the division may not withhold any portion of the submitted information under section 552.103 or section 552.111 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, in that instance, the division must release the submitted information in accordance with section 402.084. However, if the division determines the requestor is not eligible to receive the submitted information under section 402.084 of the Labor Code, then the division must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code.²

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

²In that instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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". The signature is fluid and cursive, with a large, stylized initial "C" and "M".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 460937

Enc. Submitted documents

c: Requestor
(w/o enclosures)