



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

Ms. Cynthia Villarreal-Reyna
Director
Office of Agency Counsel
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104, Mail Code 110-1a
Austin, Texas 78714-9104

OR2012-13010

Dear Ms. Villareal-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# 462284 (TDI# 128342).

The Division of Worker's Compensation of the Texas Department of Insurance (the "division") received a request for the attestments of two named individuals related to a specified arbitration and all decisions the department is aware of in which one of the named individuals has been used by an insurance carrier. You state the department will release some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.¹

¹We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

Initially, we address your assertion that some of the submitted information is subject to a previous determination issued as Open Records Letter No. 2005-01938 (2005). Open Records Letter 2005-01938 authorizes the division to withhold information maintained in a division investigative file maintained under section 413.002, 413.0511, or 413.0512 of the Labor Code under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code without the necessity of requesting a ruling under the Act unless the information either is subject to the release provisions of section 402.092, 413.0511, 413.0513, or 413,0514 of the Labor Code or is claim file information subject to subsection 402.092(c) of the Labor Code. However, because the laws on which Open Records Letter No. 2005-01938 was based have changed, the department may no longer rely on it as a previous determination. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We will, however, address your arguments against disclosure of this 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. 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;
- (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; or
- (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).

You assert the submitted attestments, which you have marked, contain information relating to an investigation of an individual health care provider by the Office of the Medical Advisor under section 413.002, 413.0511, and 413.01512 of the Labor Code. Further, you state the submitted attestments are not subject to the release provisions in sections 402.092, 413.0511, 413.513, or 413.0514 of the Labor Code. Accordingly, we find the division must withhold the submitted attestments you have marked under section 552.101 of the Government Code in conjunction with section 402.092 of the Government Code.

Section 552.101 of the Government Code also encompasses section 402.083 of the Labor Code, which 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[.]” *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). However, we also have stated “[w]hether specific information implicitly discloses the identify of a particular employee must be determined on a case-by-case basis.” *Id.* Prior decisions of this office have found 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 402.083.² You state the information you have marked is derived from claim files and implicitly or explicitly discloses the identities of employees who have filed workers’ compensation claims. Based on your representations and our review, we find the information we have marked implicitly or explicitly identifies workers’ compensation claimants. Therefore, the division must withhold the information we have marked under section 552.101 in conjunction with section 402.083. However, we conclude you have failed to show the remaining information at issue either implicitly or explicitly identifies employees who have filed workers’ compensation claims. Therefore, the remaining information at issue is not confidential under section 402.083 and may not be withheld under section 552.101.

²The “commission” refers to the predecessor agency of the division, which was established under House Bill 7, 79th Legislature, R.S. (2005).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, however, we find that because the remaining information you have marked pertains to worker's compensation claims, there is a legitimate public interest in this information. *See* Open Records Decision Nos. 545 at 4 (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 423 at 2 (1984) (scope of public employee privacy is narrow). Furthermore, we find release of the remaining information does not implicate the privacy interests of any individuals because the individuals have already been de-identified under section 552.101 in conjunction with section 402.083 of the Labor Code. Therefore, the division may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the division must withhold the submitted attestments you have marked under section 552.101 of the Government Code in conjunction with section 402.092 of the Government Code. The division must withhold the information we have marked under section 552.101 in conjunction with section 402.083 of the Labor Code. The division 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,

A handwritten signature in black ink, appearing to read "Sean Nottingham".

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 462284

Enc. Submitted documents

c: Requestor
(w/o enclosures)