



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2012

Mr. Nick Lealos
Staff Attorney
Legal & Regulatory Affairs Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2012-18749

Dear Mr. Lealos:

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# 471586 (TDI# 131283).

The Texas Department of Insurance (the "department") received a request for information pertaining to designated doctors, including (1) how many are in the system; (2) how many exams have been held each year during a specified time period; (3) how many requests have been made each year during the same time period; (4) what is the breakdown of requests by type; (5) how many complaints were received during the time period; (6) how many of the complaints resulted in a violation; (7) the number of "BRCs" requested and held during the time period; and (8) the number of "CCHs" requested and held during the time period. 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. 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 information relates to the number of complaints against designated doctors and how many of those complaints resulted in violations issued against designated doctors. We note the submitted information consists of aggregate numbers of complaints filed against doctors and closed with a particular status. You have failed to demonstrate how these aggregate numbers consist of information maintained in the investigation files of the division. Upon review, therefore, we find you have not demonstrated how the information is subject to section 402.092 of the Labor Code, and the department may not withhold the information under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the submitted information 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 471586

Enc. Submitted documents

c: Requestor
(w/o enclosures)