



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2013

Ms. Danielle Folsom  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2013-13733

Dear Ms. Folsom:

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# 496903 (Houston GC No. 20545).

The City of Houston (the "city") received a request for all personnel records for a named individual. You state the city will make some of the requested information available to the requestor. 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 exception encompasses information that other statutes make confidential, such as section 402.083 of the Labor Code. Section 402.083 provides, in part, "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas Department of Insurance (the "division")] except as provided by this subtitle or other law." Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* ORD 533 at 3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the

Labor Code to information other parties obtain from division files). Additionally, 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.*

You state Exhibits 3 through 8 were obtained from division worker's compensation claim files. Based upon this representation and our review, we agree the information at issue is subject to section 402.083(a). Because the requestor seeks information pertaining to a named worker's compensation claimant, release of any information obtained from the division would disclose the identity of a worker's compensation claimant. Thus, we conclude section 402.083(a) is generally applicable to Exhibits 3 through 8 in their entirety. In this instance, however, the requestor is acting as the employee's authorized representative and has provided a consent to release form. Accordingly, we will address the applicability of section 402.084 of the Labor Code.

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

(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 by Subsection (a) to:

...

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

Labor Code § 402.084(a), (b)(2). Section 402.084 applies to the division. Thus, the city is not subject to the release provisions of section 402.084. Accordingly, the city need not release any portion of the information at issue in accordance with section 402.084 and must withhold Exhibits 3 through 8 in their entirety under section 552.101 in conjunction with section 402.083(a).<sup>1</sup>

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. The MPA provides, in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find Exhibit 2 constitutes medical records subject to the MPA. Accordingly, we conclude the city must withhold Exhibit 2 under section 552.101 in conjunction with the MPA.

In summary, the city must withhold Exhibits 3 through 8 in their entirety under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code. The city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with the MPA.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial 'L'.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 496903

Enc. Submitted documents

c: Requestor  
(w/o enclosures)