



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2013

Mr. Nick Lealos
Staff Attorney
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2013-14360

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# 496582 (TDI #139459).

The Division of Worker's Compensation of the Texas Department of Insurance (the "division") received a request for information pertaining to two named physicians, specifically (1) the dates when the physicians were certified and any recertifications for them to serve as designated doctors; (2) documentation describing the dates the physicians submitted their request or application for recertification; and (3) copies of any documentation regarding lapses in the physicians' certifications to serve as designated doctors. 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.

Initially, we must address the division's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Subsection 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or

evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1). As of the date of this letter, we note the division has not submitted information pertaining to one of the named physicians. Consequently, we find the division failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert the requested information is confidential under section 552.101 of the Government Code. Because you have not submitted a portion the requested information to this office for our review, we have no basis for finding it confidential under section 552.101. Thus, we have no choice but to order you to release this information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. However, as you have submitted responsive information for the other named physician, we will address your argument under section 552.101 of the Government Code for that 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 state the submitted information consists of an investigation file of an applicant for certification as a designated doctor assembled by the Office of the Medical Advisor and Medical Quality Review Panel under sections 413.0511 and 413.0512 of the Labor Code. Further, we understand the submitted information is not subject to the release provisions in sections 402.092, 413.0511, 413.0513, or 413.0514 of the Labor Code. Accordingly, we find the division must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.

In summary, the division must release the information it failed to submit in accordance with section 552.302 of the Government Code. The division must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.

You ask this office to issue a previous determination that would permit the division to withhold information in an investigative file maintained under section 413.0511 or section 413.0512 of the Labor Code pursuant to section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code without the necessity of requesting a decision under the Act. We decline to issue such a previous determination at this time. Accordingly, 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, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Cypert". The signature is fluid and cursive, with a large initial "J" and "D".

James D. Cypert
Assistant Attorney General
Open Records Division

JDC/ac

Ref: ID# 496582

Enc. Submitted documents

c: Requestor
(w/o enclosures)