



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 15, 1994

Ms. Susan Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, 4000 South IH-35
Austin, Texas 78704-7491

OR94-068

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code, formerly V.T.C.S. article 6252-17a.¹ Your request was assigned ID# 22510.

In OR93-549 (1993), this office determined that the Texas Workers' Compensation Commission ("the commission") may withhold under section 552.103(a) of the Open Records Act certain investigative documents that relate to commission hearings. That decision also determined that section 552.103(a) does not apply to information that has been made available to all the parties to the pending or anticipated commission hearings. As for the documents to which section 552.103 does not apply, we explained in OR93-549 that the commission must withhold under section 552.101 of the Open Records Act, in conjunction with section 402.083(a) of the Labor Code, information that explicitly discloses the identity of the claimants, i.e., the claimant's name, spouse's name, social security number, home telephone number, and home address. Section 402.083 of the Labor Code also protects from disclosure information that implicitly reveals the identity of a claimant. *See* Open Records Decision No. 619 (1993). Thus, we instructed the commission to determine whether certain information on an employee's claim file implicitly discloses the identity of the employee for purposes of section 402.083(a) of the Labor Code. In accordance with those instructions, you have resubmitted numerous claim files with redactions of information which you argue

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts. 1993, 73d Leg., ch. 268, §46. The Open Records Act is now codified in the the Government Code at chapter 552. *Id.* §1. This codification of the Open Records Act is a nonsubstantive revision. *Id.* §47.

implicitly identifies an employee, *i.e.*, the employee's date of birth, sex, race, ethnicity, name of supervisor, location of where the injury occurred, the name of the person who prepared the form, and names of witnesses. You also redacted block 13 of one of the forms, which has what you say may be an employee insurance identification number.

Section 402.083 of the Labor Code makes confidential only information in or derived from a claim file that explicitly or implicitly discloses the identity of the employee filing the workers' compensation claim. Open Records Decision No. 619 (1993). Whether information implicitly discloses an employee's identity must be determined on a case by case basis. *Id.* Claim file information that reveals the identity of the employer or the nature of the violation does not implicitly disclose the identity of the employee in this case since the employer has such a large work force. *Id.* at 10. However, this office has concluded that the birthdate of a claimant does implicitly disclose the identity of the employee. *See id.* We think an insurance identification number likewise implicitly discloses a claimant's identity.

We are concerned here with the information that appears on the commission's "Employer's First Report of Injury or Illness" form. You say that when read in conjunction with information on that form about the date and nature of the injury, release of a claimant's sex, race, ethnicity, or supervisor, and of the location where the injury occurred, the names of any witnesses, and the name of the person who prepared the form "may reasonably be expected to implicitly disclose a claimant's identity." You also say that "even the date of injury may need to be redacted in some future case that involves a fatality, a small employer or . . . high media interest." We conclude that you have not sufficiently explained how the identity of a particular employee can be implied from the disclosure of this information.

We can imagine situations in which disclosure of this information may implicitly disclose the identity of a claimant. Individuals who were close to the incident might be able to identify an employee by piecing together this information with the information about the date and nature of the injury. Identification of a claimant could likewise be possible if the situation involves a small work force or if, as you suggest, the media has publicized information about the incident. However, we cannot conclude that in every situation this information necessarily implicitly discloses a claimant's identity. As you have supplied no facts about any of the incidents which would indicate that the release of this information implicitly discloses the identity of a particular claimant, we therefore conclude that in this instance you must release information about the claimants' sex, race, ethnicity, supervisor, the location of where the injury occurred, the names of any witnesses, and the name of the person who prepared the form.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Government Section

Ref.: ID# 22510

Enclosures: Submitted documents

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