



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2003

Ms. A. Kaylene Ray
Assistant General Counsel
Texas Workers' Compensation Commission
4000 South I-35, MS-4D
Austin, Texas 78704

OR2003-6412

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187552.

The Texas Workers' Compensation Commission (the "commission") received a request for the documentation that a medical quality review panel utilized in a specified medical quality review. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted to this office by a representative of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 402.092 of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances. Labor Code § 402.092(a). "Investigative file" is defined as "any information compiled or maintained by

¹By letter dated July 29, 2003, the commission has withdrawn its argument under section 552.103 of the Government Code.

the commission with respect to a commission investigation authorized by law.” *Id.* § 402.092(d). Section 413.0511 of the Labor Code requires the commission to employ or contract with a medical advisor. The medical advisor must make recommendations regarding the adoption of commission rules to, among other things, impose sanctions or delete doctors from the commission's list of approved doctors under section 408.023 for any reason described by section 408.0231, review compliance with commission rules, or impose conditions or restrictions as authorized by section 408.0231(f). *See* Labor Code § 413.0511; *see also id.* §§ 408.023, .0231.

You inform us that the information at issue concerns possible violations of the Texas Workers' Compensation Act (the “Act”). You state that the commission maintains investigation files pursuant to three separate provisions of the Act, including section 413.0512 of the Labor Code. This section establishes a medical quality review panel to recommend to the commission's medical advisor appropriate action regarding doctors, other health care providers, insurance carriers, and utilization review agents and the addition or deletion of doctors from the commission's list of approved doctors under section 408.023 or the list of designated doctors under section 408.122. *See* Labor Code § 413.0512. Additionally, section 413.0513 states that information maintained by or on behalf of the commission under section 413.0511 or 413.0512, and that is confidential under law, may not be disclosed. *See* Labor Code § 413.0513. You indicate that the submitted information is contained in an investigation file under section 413.0512, and is confidential under section 402.092 and 413.0513. You do not indicate that the commission has made any findings relevant to section 402.092, subsections (e) and (f) of the Labor Code,² that would affect the disclosure status of the investigation file at issue.

Based on our review of the submitted information and your representations, we conclude that the information at issue consists of investigative material that is subject to section 402.092.

² These subsections provide:

(e) The commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

- (1) the complaint was groundless or made in bad faith; or
- (2) the complaint lacks any basis in fact or evidence; or
- (3) the complaint is frivolous; or
- (4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

A release in response to the present request would not be permissible under section 402.092(a) of the Labor Code. Thus, the investigative file information must be withheld under section 552.101 in conjunction with section 402.092. As we are able to make this determination, we need not address your remaining arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 187552

Enc: Submitted documents

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