



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2005

Mr. Dean L. Krohn
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

OR2005-01768

Dear Mr. Krohn:

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# 219564.

The Texas Workers' Compensation Commission (the "commission") received a request for a list of all current and former patients treated by the requestor since May 2000. You claim that the requested 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 made confidential by other statutes. Section 402.083 of the Labor Code provides as follows:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.
- (b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 is not confidential.

Labor Code § 402.083. This office has interpreted section 402.083 to 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." Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld.

The commission states that "[t]o the extent that employees have not been finally adjudicated of wrongfully obtaining payment pursuant to Tex. Labor Code § 415.008, the information sought consists of claim file information regarding employees (*i.e.* injured workers or workers' compensation claimants) that is excepted from disclosure pursuant to § 402.083." Because you do not indicate which individuals, if any, in the submitted list are subject to section 402.083(b), we must rule conditionally. To the extent that the submitted list includes the names of employees who have not been "finally adjudicated of wrongfully obtaining payment under section 415.008," the list constitutes claim file information that is confidential under section 402.083(a) of the Labor Code. *See* Lab. Code § 402.083. It does not appear that the requestor is a party authorized to receive such information under section 402.084 or 402.085 of the Labor Code. *See* Lab. Code §§ 402.084(b) (list of parties to whom claim information may be released), 402.085 (mandatory and discretionary exceptions to confidentiality). Therefore, the commission must withhold the submitted list pursuant to section 552.101 of the Government Code to the extent the individuals listed are not subject to section 402.083(b) of the Labor Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 219564

Enc. Submitted documents

c: Dr. David K. Liang, D.C.
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(w/o enclosures)