



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 3, 2005

Mr. Richard J. McGillivray  
Assistant General Counsel  
Texas Workers' Compensation Commission  
7551 Metro Center Drive, Suite 100, MS-4D  
Austin, Texas 78744

OR2005-09958

Dear Mr. McGillivray:

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# 234588.

The Texas Workers' Compensation Commission (the "commission") received a request for the following:

- 1) All settlement agreements, judgments or orders in any litigation between the TWCC and David Bailey, D.C. or TWCC 1 Ltd.;
- 2) All correspondence between TWCC or its attorneys on one hand and David Bailey, D.C. or TWCC 1 Ltd., or their attorneys on the other hand relating to any litigation between the TWCC and David Bailey, D.C. or TWCC 1 Ltd.; and
- 3) All pleadings and briefs filed by any party in any litigation between the TWCC and David Bailey, D.C. or TWCC 1 Ltd.

You state that you will release a portion of the requested information, but claim that the submitted information is excepted from disclosure in accordance with a previous determination issued by this office. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107(2) of the Government Code. We have considered your arguments and reviewed the submitted information.

The commission claims that Exhibit 7 contains information derived from a claim file and made confidential by section 402.083 of the Labor Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses section 402.083 of the Labor Code. Section 402.083 provides that "[i]nformation 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." *See* 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 Exhibit 7 contains a claimant's name and date of injury and indicates that this is information derived from a claim file. Based on your representation and our review, we agree that the information you have highlighted in Exhibit 7 is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code.

Turning to the remaining information, the commission notes that this office issued a previous determination in *Open Records Letter No. 2005-01938 (2005)* that authorizes the commission to withhold information in certain investigative files under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code, with limited exceptions. *See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001)* (delineating elements of second type of previous determination under *Gov't Code § 552.301(a)*). However, the commission seeks clarification of whether the previous determination issued in *Open Records Letter No. 2005-01938* remains applicable if the investigation file information is also contained within publicly filed court documents. You inform us that the submitted information consists of briefs and attachments that have been filed in court. You explain that the briefs contain information derived from investigative files maintained by the commission, and that the attachments are actual documents from investigative files maintained by the commission. For the previous determination to remain applicable, the law, facts, and circumstances on which the prior attorney general ruling was based must not have changed since the issuance of the ruling. *See Open Records Decision No. 673 (2001)*. Because the submitted information is contained in a public court record, the facts and circumstances surrounding *Open Records Letter No. 2005-01938* have changed and the previous determination issued in that ruling is not applicable in this instance. As such, we will consider your arguments against disclosure.

Section 552.101 also encompasses information protected by section 402.092 of the Labor Code. Section 402.092 provides, in relevant part:

(a) In this section, “investigation file” means any information compiled or maintained by the division with respect to a division investigation under this subtitle or other workers’ compensation law. The term 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.

(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 Chapter 552, Government Code.

(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.

Labor Code § 402.092(a)-(d). You state that briefs filed with the court contain attachments which consist entirely of investigative files maintained by the commission pursuant to sections 413.002, 413.0511, and 413.0512 of the Labor Code. Section 413.002 authorizes the commission to maintain a division of medical review to ensure compliance with the rules and to implement chapter 413 under the policies adopted by the commission. *Id.* Section 413.0511 generally allows the commission to employ or contract with a medical advisor who will make recommendations to the commission regarding the adoption of rules pursuant to various provisions of chapters 408 and 413 of the Government Code. *See id.* § 413.0511(b). Section 413.0512 establishes a medical quality review panel of health care providers to assist the medical advisor in performing the duties required under section 413.0511 of the Labor Code. *Id.* §§ 413.0511, 413.0512(a). Section 413.0513 of the Labor Code provides that “[i]nformation collected, assembled, or maintained by or on behalf of the commission under Section 413.0511 or 413.0512 constitutes an investigation file for

purposes of Section 402.092 and may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section.” *Id.* § 413.0513(a).

Section 402.092 makes confidential only information maintained in the investigation files of the division. The information at issue is contained as attachments to briefs filed with a court. As such, it is not maintained in the investigation files of the division, and the confidentiality provision of section 402.092 does not apply. *See* Open Records Decision No. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection). Accordingly, the commission may not withhold the information at issue under section 402.092.

The commission also informs us that briefs filed with the court by both the commission and the plaintiffs contain information derived from investigative files maintained by the commission. The commission asserts that the confidentiality provisions of sections 402.092 and 413.0513 apply to information derived from investigative files maintained by the commission. We disagree.

To begin our analysis, we note that the primary goal in statutory interpretation is ascertaining and effectuating the legislature’s intent. *In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001). In discerning the legislature’s intent, we begin with a statute’s plain language because we assume that the legislature tries to say what it means and, thus, the words it chooses are the surest guide to legislative intent. *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999). “In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994)). Rules of statutory construction regarding a statute related to the same subject matter are intended to be construed consistently and to operate in harmony. *Moses v. Fort Worth Ind. Sch. Dist.*, 977 S.W.2d 851, 853 (Tex. App – Fort Worth 1998, no pet.). Unless there is language clearly indicating a contrary intent, words or phrases used in different parts of a statute are presumed to have the same meaning throughout, and where the meaning in one instance is clear, this meaning will be attached in all other instances. *S.W. Props., L.P. v. Lite-Dec of Tex., Inc.*, 989 S.W.2d 69, 71 (Tex. App – San Antonio 1998, pet denied).

A confidentiality provision similar to section 402.092 is found in section 402.083 of the Labor Code. As previously noted, section 402.083 of the Labor Code provides that “[i]nformation 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.” Labor Code § 402.083 (Emphasis added). By including the words “or derived from,” the legislature extended the confidentiality of the information at issue from the contents of the claim file to include any information derived from those contents. In section 402.092, however, the legislature only provided for the confidentiality of “[i]nformation maintained in the investigation files of the commission.” Had the legislature so desired, it could have extended the confidentiality of section 402.092 to include information derived from the files. Under

the rules of statutory construction, we should not assume the omission was unintentional. *See Upjohn Co. v. Rylander*, 38 S.W.3d 600, 607 (Tex. App – Austin 2000, pet. denied). As such, we find that the confidentiality of section 402.092 is limited to the actual information maintained in the investigation files of the commission, and does not extend to information derived from those same files. Accordingly, information found in briefs filed with the court that is derived from investigative files maintained by the commission is not confidential under section 402.092 and may not be withheld on that basis.

Lastly, the commission states that certain documents in Tabs E and F from Exhibit 1 were ordered sealed by a court, and claims that such information is excepted under section 552.107(2) of the Government Code. Section 552.107(2) excepts from required public disclosure information if “a court by order has prohibited disclosure of the information.” *See* Gov’t Code § 552.107(2). The court order was signed by the judge on May 19, 2004. The commission informs us that the case from which the order stems has been settled, but the order to seal has not been lifted by the court. After reviewing the court order, we find that the information subject to the order to seal is excepted from public disclosure and must be withheld under section 552.107(2).

In summary, the highlighted information in Exhibit 7 is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code. The information subject to the order to seal is excepted from public disclosure and must be withheld under section 552.107(2). The remaining information must be released to the requestor.

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); *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 Office of the Attorney General 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,



José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 234588

Enc. Submitted documents

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