



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2006

Ms. Cynthia Villarreal-Reyna  
Section Chief, Agency Counsel  
Legal and Compliance Division, MC 110-1A  
Texas Department of Insurance  
P. O. Box 149104  
Austin, Texas 78714-9104

OR2006-03348

Dear Ms. Villarreal-Reyna:

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# 245524.

The Texas Department of Insurance (the "department") received a request for all medical dispute resolution findings and decisions issued by the department's Division of Workers' Compensation (the "division") or its predecessor, the Texas Workers' Compensation Commission, that either relate to or decide the appropriate amount of reimbursement to be paid for inpatient hospital claims for medical services between September 1, 1992 and August 1, 1997. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that submitted information includes an envelope in which a "Medical Dispute Resolution Findings and Decision" was mailed by the division. We determine that this information is not responsive to the instant request. Information that is not responsive

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<sup>1</sup>We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to this request need not be released. Moreover, we do not address such information in this ruling.

Next, we note that section 552.022 of the Government Code provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases; [and]

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(12), (15). The responsive submitted information consists of a "Medical Dispute Resolution Findings and Decision" issued by the division. The medical dispute decision is subject to subsections 552.022(a)(12) and 552.022(a)(15) of the Government Code. Gov't Code § 552.022(a)(12), (15); *see* Lab. Code § 413.031(c) ("In resolving disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is *to adjudicate the payment* given the relevant statutory provisions and commissioner rules. The division shall publish on its Internet website the division's medical dispute decisions[.]") (italics added); *see also* Gov't Code § 2001.004(3) ("In addition to other requirements under law, a state agency shall . . . make available for public inspection all final orders, decisions, and opinions."). Therefore, the department may only withhold the submitted medical dispute decision if it is confidential under other law. Although you argue that the decision is excepted under section 552.103 of the Government Code, that exception is discretionary and, as such, is not other law for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver); *see also* Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally).

However, we note that identifying information of the employee in the medical dispute decision is subject to section 552.101 of the Government Code which constitutes other law for purposes of section 552.022.<sup>2</sup> Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes. Section 402.083(a) 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 division except as provided by this subtitle.” Lab. Code § 402.083(a). 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 submitted medical dispute decision contains a date of injury, the injured employee’s name, and a commission claim number. Furthermore, we understand that this information is derived from a claim file. Upon review, we determine that this information, which we have marked, is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code.<sup>3</sup> See Lab. Code § 413.031(c) (division shall redact from medical dispute decisions required to be published on its Internet website only that information necessary to prevent identification of the injured worker). Furthermore, the submitted decision contains an employer’s name that we understand is also derived from a claim file; to the extent the employer’s name would identify the injured employee, it must also be withheld under section 552.101 in conjunction with section 402.083.<sup>4</sup> Otherwise, the employer’s name must be released pursuant to section 413.031.

In summary, the submitted information that is not responsive to this request need not be released. The submitted medical dispute decision must be released pursuant to

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<sup>3</sup>We note that the department has not explained, nor are we able to discern from our review, that this identifying information is subject to the release provisions of section 402.084 or section 402.085 of the Labor Code. See Lab. Code §§ 402.084, .085 (providing for the release of information subject to section 402.083 of the Labor Code in certain circumstances).

<sup>4</sup>To the extent our conclusion under section 402.083(a) of the Labor Code results in a conflict with section 2001.004(3) of the Government Code, which provides that a state agency shall make available for public inspection all final orders, decisions, and opinions, we conclude that section 402.083(a) is more specific with regard to the claim file information at issue than section 2001.004(3). Thus, we conclude that section 402.083(a) governs the release of the claim file information in this instance. See *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 533 (1990), 451 (1986); see also Gov’t Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision).

subsections 552.022(a)(12) and 552.022(a)(15) of the Government Code, with the exception of the marked date of injury, the injured employee's name, and commission claim number in the decision. This identifying information must be withheld under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. To the extent the employer's name in the submitted decision would identify the employee, it must also be withheld under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code; otherwise, the employer's name must be released along with the rest of the medical dispute decision.

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. 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 245524

Enc. Submitted documents

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