



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2006

Mr. Joshua Haley  
Staff Attorney  
Texas Municipal League Intergovernmental Risk Pool  
P.O. Box 149194  
Austin, Texas 78714-9194

OR2006-06184

Dear Mr. Haley:

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# 251302.

The Texas Municipal League Intergovernmental Risk Pool ("TML") received a request for all documents concerning a named individual's claims of injury. 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.<sup>1</sup> We have also received and considered comments from the requestor. See Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. You claim that the submitted information is confidential under section 402.083 of the Labor Code. Section 402.083(a) of the Labor Code states that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Texas

---

<sup>1</sup>We assume that the "representative 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.

Workers' Compensation Commission (the "commission")] except as provided by this subtitle." Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), the City of Brownsville received a request for similar information. This office construed the predecessor to section 402.083(a) to apply only to information that the governmental body obtained from the Industrial Accident Board, subsequently the commission, and now the Texas Department of Insurance, Division of Workers' Compensation (the "division"). You have not informed us, and the documents do not reflect, that the submitted information was obtained from the commission or the division. Therefore, we conclude that the submitted information is not confidential under section 402.083 and may not be withheld under section 552.101 on that basis.

You also claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with 402.091 of the Labor Code. Section 402.091(a) provides that "[a] person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this subchapter to a person not authorized to receive the information directly from the division." Labor Code § 402.091(a). As we have determined that the submitted information is not confidential pursuant to section 402.083 of the Labor Code, we conclude that section 402.091 is not applicable in this instance.

We note, however, that some of the submitted information consists of medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 159.002 of the MPA provides the following:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). This office has also concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a

physician. *See* Open Records Decision No. 546 (1990). Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the medical records that may only be released in accordance with the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are subject to common law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the information that TML must withhold pursuant to section 552.101 in conjunction with common law privacy.

We note that the remaining information includes a Texas driver's license number. Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]"<sup>2</sup> Gov't Code § 552.130(a)(1). Accordingly, you must withhold the Texas driver's license number we have marked pursuant to section 552.130.

The remaining information also includes insurance policy numbers. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* We have marked the insurance policy numbers that TML must withhold under section 552.136.

Finally, we note that the remaining information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, TML must

---

<sup>2</sup> This office will raise mandatory exceptions to disclosure on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the social security number contained in the submitted information under section 552.147.<sup>3</sup>

In summary, we conclude as follows: (1) the marked medical records may only be released in accordance with the MPA; (2) the marked information must be withheld under section 552.101 of the Government Code in conjunction with common law privacy; (3) the marked Texas driver's license number must be withheld under section 552.130 of the Government Code; (4) the marked insurance policy numbers must be withheld under section 552.136 of the Government Code; and (5) the submitted social security number must be withheld under section 552.147 of the Government Code. The remaining information must be released.

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).

---

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 251302

Enc. Submitted documents

c: Mr. M. Keith Ogle  
Shannon, Gracey, Ratliff & Miller, L.L.P.  
777 Main Street, Suite 3800  
Fort Worth, Texas 76102  
(w/o enclosures)