



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 15, 2007

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

OR2007-01958

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# 272108.

The Texas Department of Insurance (the "department") received a request for the mailing addresses of people who filed workers' compensation claims after November 2006.<sup>1</sup> 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 representative sample of information.<sup>2</sup> We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>You inform us that the requestor subsequently clarified his request. *See generally* Gov't Code § 552.222(b) (governmental body may ask requestor to clarify request).

<sup>2</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.

Initially, we note that the department has failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

You indicate that the department received the original request for information on November 20, 2006. Accordingly, you were required to submit your request for a decision to this office no later than December 6, 2006. Further, you were required to submit the items enumerated under section 552.301(e) to us no later than December 13, 2006. However, you did not request a ruling from or submit the required documents to this office until December 15, 2006. Although you state, and provide documentation showing, that the requestor clarified his request in writing on December 8, 2006, you have not informed us of the date on which the department requested clarification. Since we are unable to calculate whether or to what extent the deadlines mandated by section 552.301 have been tolled, we find that the department failed to comply with the procedural requirements of section 552.301 in requesting this decision from our office. *See* Open Records Decision No. 663 (1999) (request for clarification does not trigger a new ten business day time interval, but merely tolls the ten day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response

A governmental body's failure to comply with the procedural requirements of section 552.301 of the Government Code results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the requested 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 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.” *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 6 (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.<sup>3</sup> 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 department states that the submitted addresses pertain to employees who have not been finally adjudicated for wrongfully obtaining payment. *See* § 402.083(b) (information concerning employee who has been finally adjudicated of wrongfully obtaining payment under section 415.008 is not confidential). Further, the department states that the submitted addresses are derived from claim files. Based on your representations and our review, we agree that the submitted information is confidential under section 402.083 of the Labor Code and must be withheld pursuant to section 552.101 of the Government 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

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<sup>3</sup>The “commission” refers to the predecessor agency of the Texas Department of Insurance, Division of Workers’ Compensation, which was established under House Bill 7, 79<sup>th</sup> Legislature, R.S. (2005).

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,



Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/krl

Ref: ID# 272108

Enc. Submitted documents

c: Mr. Steve Nelson  
801 Congress, #350  
Austin, Texas 77002  
(w/o enclosures)