ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2007

Ms. Sara Shiplet Waitt
Senior Associate Commissioner
Texas Department of Insurance
Legal and Compliance Division, MC 110-1A
P. O. Box 149104
Austin, Texas 78714-9104

OR2007-06567

Dear Ms Waitt:

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# 279469.

The Texas Department of Insurance (the "department") received a request for 1) "[c]opies of all petitions to district court[s] filed between 2003 and 2007 by insurance companies who were appealing indemnity and medical dispute claim cases[;]" 2) "the number of those petitions received by year from 2003-2006 and 2007 filed by insurance companies . . . and the number for each of those years that were filed by employees[;]" and 3) "any memos written by [a specified individual] on the subsequent injury fund that addresses its limits on paying parents of workers killed in fatal accidents from 2003 to the present[.]" You state that the department has no information responsive to the third category.[1] You state that information pertaining to the second category has been released to the requestor. You claim that a portion of the submitted information that is responsive to the first category is excepted

[1]We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

from disclosure under section 552.101 of the Government Code.[2] We have considered the exception you claim and reviewed the submitted representative sample of information.[3]

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.[4] 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. You state that some of the submitted information derived from claim files implicitly or explicitly discloses the identities of employees who have filed workers' compensation claims. Based on your representations and our review, we find that section 402.083 is applicable to some of the submitted information. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. The remaining submitted 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

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[2]Although you also raise section 552.022 of the Government Code, this provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

[3]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.

[4]The "commission" refers to the predecessor agency of the Texas Department of Insurance, Division of Workers' Compensation, which was established under House Bill 7, 79th Legislature, R.S. (2005).

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,

Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/jb

Ref: ID# 279469

Enc. Submitted documents

c: Ms. Lise Olsen
Special Projects
the Houston Chronicle
801 Texas Avenue
Houston, Texas 77002
(w/o enclosures)