



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 10, 2007

Ms. Cathleen Parsley
General Counsel
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

OR2007-08697

Dear Ms. Parsley:

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# 283416.

The State Office of Administrative Hearings ("SOAH") received a request for copies of all decisions issued by SOAH involving the Texas Department of Insurance Division of Workers' Compensation or its predecessor agency, the Texas Workers' Compensation Commission, in which SOAH assessed penalties against an insurance carrier alleging an administrative violation pursuant to section 409.023 of the Labor Code or decisions in which section 415.034 of the Labor Code was cited. You argue that SOAH is not the proper custodian of the requested records. Alternatively, you claim that some of the requested information is exempted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the submitted information.

You inform us that the submitted information contains medical dispute resolution cases and compliance cases that were referred to SOAH from the Texas Department of Insurance Division of Workers' Compensation (the "division"), or its predecessor agency, the Texas Workers' Compensation Commission.¹ The legislature has transferred to SOAH the hearings functions for the division. Section 2003.021(c) of the Government Code provides that SOAH shall conduct hearings under subtitle A of title 5 of the Labor Code, the Texas Workers Compensation Act. Section 402.073 of the Labor Code directs the division to adopt

¹We note that effective September 1, 2005, the legislature abolished the Texas Workers' Compensation Commission and established the Division of Workers' Compensation as a division within the Texas Department of Insurance to administer and operate the workers' compensation system. See Lab. Code § 402.001; Act of May 29, 2005, 79th Leg., R.S., § 1.003, Vernon's Tex. Sess. Law Serv. 469, 470.

by rule a memorandum of understanding with SOAH governing administrative procedure law hearings under the Texas Workers Compensation Act. The memorandum of understanding has extensive provisions regarding the confidentiality of information obtained by SOAH in connection with the hearings, including the following:

While SOAH will have temporary custody of the hearings records, the [division] retains statutory authority as custodian of records and is ultimately responsible, as the originating agency, for the release or non-release of the information. Therefore, should any information, which may be confidential under [section 401 *et seq.*, Labor Code], [division] rules, or other law, be requested from SOAH by any person or entity, SOAH shall follow all legal requirements necessary to ensure that the confidential information or document is not released, unless specifically required by law, and shall provide such request to the [division] immediately upon receipt.

28 T.A.C. § 149.6(f). The memorandum of understanding also addresses in detail, among other things, the treatment of confidential information at hearings. *Id.*; *see also* Labor Code §§ 402.083(a), 402.092 (information in or derived from claim file confidential; information in division investigation files confidential).

For the purposes of the Act, we conclude that SOAH is acting as an agent for the division in conducting hearings pursuant to section 2003.021(c) of the Government Code and handling division information in connection therewith, but SOAH is not the division's agent for the purpose of responding to written requests for such information. Responsibility for responding to requests for information held by SOAH in connection with such hearings therefore lies with the division. *See* Open Records Decision No. 617 (1993). Persons making requests for such information should direct their requests to the division.

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/ma

Ref: ID# 283416

Enc. Submitted documents

c: Mr. Dan Kelley
400 West 15th Street, Suite 700
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(w/o enclosures)