



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2007

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2007-09868

Dear Ms. Rodriguez:

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 #285530.

The Rockdale Independent School District (the "district"), which you represent, received a request for reports pertaining to two specified incidents. You state that the district construes this request as seeking two employees' first reports of injury, which were filed by district employees for the purpose of obtaining workers' compensation benefits. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 statute, such as section 402.083 of the Labor Code. 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 of Workers' Compensation of the Texas Department of Insurance (the "division")] except as provided by this subtitle[.]" Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), the City of Brownsville had 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 Texas Workers' Compensation Commission and now the division. *See* Open Records Decision No. 533 at 3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by Labor Code § 402.083(a) to information that other parties obtain

from division files). Accordingly, information in the possession of the district that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you correctly state the legal standard for withholding information under section 402.083, you fail to explain or represent that the district received the documents at issue from the division. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with section 402.083(a).

Section 552.101 also encompasses information protected by the Americans with Disabilities Act (the "ADA"). You claim that the submitted reports are excepted from disclosure under the ADA, 42 U.S.C. §§ 12101 et seq. The ADA provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. In addition, an employer's medical examination or inquiry into the ability of an employee to perform job-related functions is to be treated as confidential medical records. 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). The Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997).

Federal regulations define "disability" for purposes of the ADA as "(1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment." 29 C.F.R. § 1630.2(g). The regulations further provide that:

physical or mental impairment means: (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. § 1630.2(h). Based on your representations and our review of the submitted documents, we find that the district has failed to demonstrate that the submitted "First Reports of Injury" pertain to a district employee's disability, as defined above. Accordingly, the district may not withhold any of the submitted information under the ADA.

Next, the district asserts that information within the reports pertaining to the actual injuries suffered by district employees is confidential under common-law privacy. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the

publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In this instance, the injuries at issue were received by district teachers while they were working as public employees. Further, these employees were seeking compensation from public funds for expenses incurred as a result of these injuries. Accordingly, we find that there is a legitimate public interest in the information you seek to withhold under common-law privacy. Therefore, the district may not withhold any of the submitted information under section 552.101 of the Government Code on that basis.

Finally, the district asserts that information pertaining to the district employees' families, contained within the submitted reports, is confidential under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. You have provided this office with public information access forms completed by the employees whose information is at issue. We note that while one employee elected to grant public access to her home address and telephone number, the other employee elected to keep all applicable personal information confidential. Therefore, the district must only withhold the information we have marked under section 552.117(a)(1) of the Government Code.¹ The remaining information must be released to the requestor.

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

¹We note that you have marked this information under section 552.024 of the Government Code. Section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. Therefore, we understand you to mark the information under section 552.117 of the Government Code, as section 552.117 is the proper exception for the substance of your argument.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 285530

Enc. Submitted documents

c: Ms. Ann Marie Graham
361 County Road 232 Loop
Rockdale, Texas 76567
(w/o enclosures)