



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 13, 2009

Ms. Cynthia Villarreal-Reyna  
Section Chief  
Agency Counsel, Legal and Regulatory Affairs  
Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2009-03331

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# 335929 (TDI# 85152).

The Texas Department of Insurance (the "department") received a request for information pertaining to administrative complaints or medical dispute reviews against a named doctor during a specified time period. You state the department is withholding portions of the requested information in accordance with the previous determination issued by this office in Open Records Letter No. 2005-00409 (2005). You claim the submitted 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.

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 contend the submitted file is an investigation file that is confidential pursuant to sections 402.092 and 414.005 of the Labor Code. Section 402.092 relates to information maintained in the investigation files of the Division of Worker's Compensation of the department (the "division"). Labor Code § 402.092. Section 402.092(d) provides information in an investigation file that is information in or derived from a claim file is governed by the confidentiality provisions of the Labor Code relating to claim file

information. *Id.* § 402.092(d). We note, and you acknowledge, the submitted information includes information derived from a claim file. Accordingly, we will address the applicability of section 402.083 of the Labor Code to this information.

Section 402.083 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[.]” This office has interpreted section 402.083 to protect only “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 10 (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, division 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. 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. Thus, any information that consists of claim file information that implicitly or explicitly identifies claimants is confidential under section 402.083 of the Labor Code and must be withheld by the department pursuant to section 552.101 of the Government Code.

We now turn to the remaining information at issue. Section 414.005 of the Labor Code provides the division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of this subtitle. *See* Gov’t Code § 414.005; *see also id.* § 414.002. Section 402.092(c) states the division’s investigation files are not open records for purposes of chapter 552 of the Government Code. *See id.* § 402.092(c). Section 402.092(b) provides information maintained in the investigative files of the division is confidential and may not be disclosed except in five limited circumstances.<sup>1</sup> *See id.* § 402.092(b). An “investigation file” is “any information compiled or maintained by the division with respect to a division investigation under this subtitle or other workers’ compensation law.” *Id.* § 402.092(a). Section 402.092(e) provides for the disclosure of the identity of the complainant in an investigation file maintained under section 414.005 when the division determines the complaint was groundless or made in bad faith, the complaint lacks any basis in fact or evidence, the complaint is frivolous, or the complaint is done specifically for competitive or economic advantage. *See id.* § 402.092(e).

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<sup>1</sup> The five limited circumstances are:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the division;
- (3) on a judicial determination of good cause;
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States; or
- (5) to an insurance carrier if the investigation file relates directly to a felony regarding workers’ compensation or to a claim in which restitution is required to be paid to the insurance carrier.

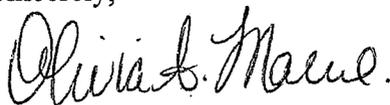
You state the remaining information consists of an investigation file maintained under section 414.005 of the Labor Code and is confidential under section 402.092. However, you inform us this investigation file was closed because the division determined the complaint had “no basis in fact.” The department seeks clarification as to how this determination affects the disclosure of the identity of the complainant under section 402.092(e). Section 402.092(e)(4) states “the division, upon request, shall disclose the identity of a complainant under this section if the division finds the complaint lacks any basis in fact or evidence.” *Id.* § 402.092(e)(4). The department states “the requestor did not make a *specific request* to disclose the identity of the complainant in this investigative file as is required under [section 402.092(e)].” Accordingly, you contend the department must withhold the identity of the complainant under section 402.092(c). We disagree. The courts have determined that words may not be added to a statute, even if the addition might seem desirable, unless necessary to give effect to clear Legislative intent. *See Lee v. City of Houston*, 807 S.W.2d 290, 294-95 (Tex. 1991) (citing *Jones v. Liberty Mutual Ins. Co.*, 745 S.W.2d 901, 902 (Tex. 1988)); Attorney General Opinion GA-0589 (2008). Statutory construction should focus initially “‘on the literal text of the statute in question’ because ‘the text of the statute is the law.’” *Getts v. State*, 155 S.W.3d 153, 155 (Tex. Crim. App. 2005); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); Attorney General Opinion GA-0354 at 2 (2005). Section 402.092(e) states, upon request, the identity of the complainant must be released from an investigation file when one of the four conditions is satisfied. Reading subsection (e), as the department states, to require a specific request for the identity of the complainant, requires this office to add the word “specific” to subsection (e). This office will not add words to a statute unless necessary to follow legislative intent. You have not demonstrated, and we do not find, a clear intent by the legislature to limit the release of a complainant’s identity under subsection (e) only to when the requestor specifically requests the identity of the complainant. Rather, we determine the department must release the identity of a complainant whenever it receives a request for information that encompasses the complainant’s identity. Here, the request encompasses a division investigative file that is subject to subsection (e). Thus, we find the information requested in this case encompasses the informant’s identity. As the division determined the complaint lacked any basis in fact, the department must release the identity of the complainant to the requestor. The department must, however, withhold the remaining information at issue in the investigative file under section 552.101 in conjunction with section 402.092(c).

In summary, to the extent the submitted file consists of claim file information that implicitly or explicitly identifies a claimant, the department must withhold such information under section 552.101 in conjunction with section 402.083 of the Labor Code. Except for the identity of the complainant in the investigative file, the department must withhold the remaining submitted information under section 552.101 in conjunction with section 402.092(c) of the Labor Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Handwritten signature of Olivia A. Maceo in cursive.

Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 335929

Enc. Submitted documents

c: Requestor  
(w/o enclosures)