



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2009

Ms. Cynthia Villarreal Reyna  
Section Chief Agency Counsel  
Legal and Compliance Division  
Texas Department of Insurance  
P.O. Box 149104, Mail Code 110-1A  
Austin, Texas 78714-9104

OR2009-04460

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# 339460 (TDI ID# 87030).

The Texas Department of Insurance (the "department") received a request for information regarding health care billing and payment data for twenty-eight named claimants receiving treatment through the department during a specified period of time. The requestor seeks each claimants' ICD-9 diagnosis codes, CPT4 Code, gender, treatment end date, paying insurance company, and the total amount billed and paid for each claim.<sup>1</sup> The requestor also seeks a "like sample" of the department's choosing, showing the same information for unspecified claimants who have the same ICD-9 codes but received different treatments. You state you have responsive information for eight of the specified claimants.<sup>2</sup> You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the

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<sup>1</sup>The department sought and received clarification for this portion of the request. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

<sup>2</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, the department states that it informed the requestor that it required more specificity to identify a "like sample" responsive to the second portion of the request. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). We understand that the department has not received a response to its request for clarification. Accordingly, we find that the department has no obligation at this time to release any information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the clarification request, the department must seek a ruling from this office before withholding any responsive information from the requestor. *See* Open Records Decision No. 663 (1999) (10-business-day deadline tolled while governmental body awaits clarification).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. 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 or other law." Labor Code § 402.083(a). This office has interpreted section 402.083 to generally 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." *See* Open Records Decision No. 619 at 10 (1993). We also have stated that "[w]hether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis." *Id.* Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee's name, beneficiary name, 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.

You argue that the names and social security numbers in the submitted information implicitly or explicitly identify claimants, and must therefore be withheld under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. Upon review, we agree. You also assert that in this instance withholding only the name and social security number of each claimant is insufficient to comply with section 402.083. You represent that because of prior healthcare relationships with the named claimants, the requestor is already in possession of their social security numbers, ICD-9 diagnosis codes, payors, ages, and genders. You argue that release of an ICD-9 code or payor that is unique among other listed ICD-9 codes and payors would allow the requestor to cross-reference with information already in his possession and relate confidential information to a particular claimant. Upon review, we agree that release of a unique payor or ICD-9 code would allow the requestor to infer the identity of the related claimant. You inform us, and it does not otherwise appear to this office, that the requestor is not one of the persons or entities to which the department is permitted to release claim file information under sections 402.084 or 402.085 of the Labor

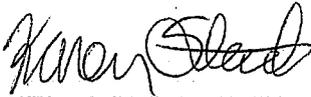
Code. We therefore conclude that pursuant to section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code, the department must withhold unique payor and ICD-9 codes.

In summary, the department must withhold all claimant names and social security numbers in the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. The department must also withhold any payor or ICD-9 code that is unique in the submitted information pursuant to 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 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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/jb

Ref: ID# 339460

Enc. Submitted documents

c: Requestor  
(w/o enclosures)