



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 12, 2009

Ms. Cynthia Villareal-Reyna  
Section Chief, Agency Counsel  
Legal & Regulatory Affairs  
Texas Department of Insurance  
Mail Code 110-1A  
Austin, Texas 78714-9104

OR2009-06407

Dear Ms. Villareal-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# 343000 (TDI Request # 87693).

The Texas Department of Insurance (the "department") received a request for seven categories of information related to a named doctor, including the number of times the named doctor has been listed as a treating physician of a claimant. You state the department is withholding information pursuant to the previous determination issued in Open Records Letter Ruling No. 2005-01938 (2005).<sup>1</sup> You state you have no information responsive to a portion of the request.<sup>2</sup> You state you have provided some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101

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<sup>1</sup> See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

<sup>2</sup> 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).

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

Initially, you acknowledge that the department failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address your argument against disclosure of this information.

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 section encompasses information protected by other statutes. Section 402.092 of the Labor Code provides confidentiality and exceptions to confidentiality for the investigation files of the Division of Workers' Compensation of the department (the "division"). Section 402.092 provides in relevant part:

(a) In this section, "investigation file" means any information compiled or maintained by the division with respect to a division investigation authorized under this subtitle or other workers' compensation law.[]

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except [in five specified situations].

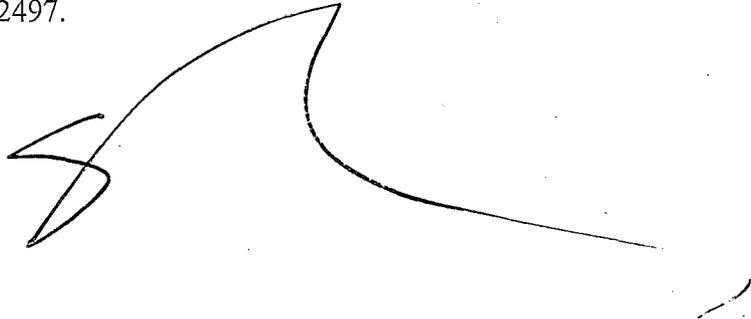
Labor Code § 402.092(a)-(b). You state "the list of complaint numbers and the received date of the filed complaints, are investigatory identification documents compiled for the investigation files of [the division.]" Therefore, based on your representations and our review, we find the submitted information is confidential under section 402.092 of the Labor Code and must be withheld under section 552.101 of the Government Code.

You also ask this office to issue a previous determination permitting the department to withhold this type of information under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code without requesting a ruling from this office. We decline to issue such a previous determination at this time.

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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 343000

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)