



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 18, 2011

Ms. Cynthia Villarreal-Reyna  
Section Chief—Agency Counsel  
Legal & Regulatory Affairs Division, MC 110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2011-05383

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# 414805.

The Texas Department of Insurance (the "department") received a request for five categories of information: (1) cease-and-desist orders issued by the department's Division of Worker's Compensation (the "division") during a specified time period to medical providers in the Dallas-Fort Worth area to cease seeking payment from workers compensation claimants; (2) complaints to the division that a medical provider or collection agency attempted to collect a medical bill from the requestor's client during a specified time period; (3) claims of administrative violations under section 413.042(b) of the Labor Code; (4) administrative violations issued by the division under section 413.042(b) of the Labor Code during a specified time period; and (5) complaints to the division against ten specified medical providers. You state you have released some information responsive to the fourth category of the request and given the requestor instructions on accessing information on the department's website. You state the department does not have information responsive to the first category of the request.<sup>1</sup> You state the department is withholding information responsive to the second, third, and fifth categories of the request in accordance with

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

previous determination issued to the department in Open Records Letter Nos. 2005-01938 and 2005-00409 (2005).<sup>2</sup> You claim portions of the information responsive to the fourth category of the request are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your statement that some of the requested information is available on the department's website. We note section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Gov't Code § 552.228(a). We also note "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; see Gov't Code § 552.221(b). Thus, the department must provide access to or copies of the responsive information you state is on the department's website to the requestor; however, we note a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. See ORD 682 at 7.

Next, we note the submitted information is subject to section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....  
(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases; [and]

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<sup>2</sup>Open Records Letter No. 2005-01938 authorizes the division to withhold under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code, without the necessity of requesting a decision under the Act, information in a division investigative file maintained under section 413.002, section 413.0511, or section 413.0512 of the Labor Code, unless the information either is subject to the release provisions of section 402.092, section 413.0511, section 413.0513, or section 413.0514 of the Labor Code, or is claim file information subject to subsection 402.092(c) of the Labor Code. Open Records Letter No. 2005-00409 authorizes the division to withhold under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code, without the necessity of requesting a decision under the Act, an investigative file maintained under section 414.005 of the Labor Code unless the information is subject to the release provisions found in section 402.092 or other provisions of law or is claim file information subject to section 402.092(c). See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

....  
(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(12), (15). The submitted information consists of official orders issued by the division subject to subsections 552.022(a)(12) and 552.022(a)(15) of the Government Code. *Id.*; *see* Lab. Code § 402.00128(b)(7) (division's commissioner or designee may enter appropriate orders as authorized by title 5 of Labor Code); *see also* Gov't Code § 2001.004(3) ("In addition to other requirements under law, a state agency shall . . . make available for public inspection all final orders, decisions, and opinions."). Therefore, the department may only withhold portions of the submitted orders if they are confidential under other law. Identifying information of the employee in the medical dispute decision is subject to section 552.101 of the Government Code, which constitutes other law for purposes of section 552.022.

Section 552.101 excepts from public 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 other statutes. Section 402.083(a) of the Labor Code provides "[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." Lab. Code § 402.083(a). 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."<sup>3</sup> Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found 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.

The submitted official orders contain employees' initials, carrier numbers, and division claim numbers, which you have marked. You inform us the carrier numbers identify claimants to the insurance carrier and to the division. Furthermore, we understand that this information

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<sup>3</sup>To the extent our conclusion under section 402.083(a) of the Labor Code results in a conflict with section 2001.004(3) of the Government Code, which provides a state agency shall make available for public inspection all final orders, decisions, and opinions, we conclude section 402.083(a) is more specific with regard to the claim file information at issue than section 2001.004(3). Thus, we conclude section 402.083(a) governs the release of the information in this instance. *See Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986); *see also* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision).

is derived from a claim file. Upon review, we determine the information you have marked is confidential under section 402.083 of the Labor Code, and the department must withhold it pursuant to section 552.101 of the Government Code.<sup>4</sup> The department must release the remaining information.

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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 414805

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.