



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2013

Mr. Stanton Strickland
Associate Commissioner
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2013-09497

Dear Mr. Strickland:

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# 489951 (TDI No. 137307).

The Division of Worker's Compensation of the Texas Department of Insurance (the "division") received a request for the application and division file of a named individual.¹ You state you have released some information to the requestor. 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.

¹You indicate the division sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

Section 402.092 of the Labor Code provides confidentiality and exceptions to confidentiality for the investigation files of the division. Section 402.092 provides in relevant part:

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except:

- (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.

(c) Division investigation files are not open records for purposes of [the Act].

(d) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

Labor Code § 402.092(b)-(d). For purposes of section 402.092, 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 [but] does not include information or material acquired by the division that is relevant to an investigation by the insurance fraud unit and subject to Section 701.151, Insurance Code.” *Id.* § 402.092(a).

You assert the submitted information consists of an investigation file of an applicant for certification as a designated doctor assembled by the Office of the Medical Advisor and the Medical Quality Review Panel under sections 413.0511 and 413.0512 of the Labor Code. Further, you state the submitted information is not subject to the release provisions in section 402.092, 413.0511, 413.0513, or 413.0514 of the Labor Code. Accordingly, we find the division must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.092 of the Government Code.

You also ask this office to issue a previous determination that would permit the division to withhold information collected, assembled, or maintained in a division investigative file under section 413.0511 or section 413.0512 of the Labor Code under section 552.101 of the

Government Code in conjunction with sections 413.0513 and 402.092 of the Labor Code without the necessity of requesting a decision under section 552.301 of the Government Code. We decline to issue such a previous determination at this time. Accordingly, 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, 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal flourish extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 489951

Enc. Submitted documents

c: Requestor
(w/o enclosures)