



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2013

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

OR2013-16241

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# 499643 (TDI Ref. No. 140530).

The Division of Workers' Compensation of the Texas Department of Insurance (the "division") received a request for records pertaining to "attempt(s) to become an approved physician by, investigations of, complaints against, and/or disciplinary actions against" a named individual. 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. 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 is contained in an investigation file of an applicant for the division’s list of approved doctors. You state the records were 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, we understand 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 Labor Code.¹

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 402.092 and 413.0513 of the Labor Code without the necessity of requesting a decision under section 552.301 of the Government

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to 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# 499643

Enc. Submitted documents

c: Requestor
(w/o enclosures)