



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2014

Ms. Karen Klaus
Public Information Coordinator
State Office of Risk Management
P.O. Box 13777
Austin, Texas 78711-3777

OR2014-09124

Dear Ms. Klaus:

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# 524093.

The State Office of Risk Management ("SORM") received a request for information pertaining to workers' compensation claims for a heat-related illness filed by or on behalf of guards employed by the Texas Department of Criminal Justice (the "department") during specified years. You state SORM released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 412.0128 of the Labor Code, which provides that

¹Although you also claim section 552.117 of the Government Code, we note section 552.1175 is the proper exception for information not held in an employment context.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

“[i]nformation in or derived from a worker’s compensation claim file regarding an employee . . . is confidential and may not be disclosed by [SORM] except as provided by this subchapter or other law.” Labor Code § 412.0128. We note the language of section 412.0128 is substantially identical to section 402.083 of the Labor Code, which provides that “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except as provided by this subtitle or other law.” *Id.* § 402.083(a). This office has interpreted section 402.083 to 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.” Open Records Decision No. 619 at 6 (1993). 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 workers’ compensation claimants and is therefore confidential under section 402.083. 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. We will apply the same analysis in applying section 412.0128 to the information at issue.

You explain that SORM administers the workers’ compensation insurance program for state employees. You state that the submitted documents consist of information retrieved from SORM’s workers’ compensation claim files. We therefore conclude any information that explicitly or implicitly identifies a workers’ compensation claimant, including a claimant’s date of injury, name, beneficiary name, claim number, social security number, home telephone number, home address, or date of birth, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code. *Cf.* Labor Code § 402.083; ORD 619 at 6. We have marked a representative sample of the types of information that must be withheld under section 412.0128.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Upon review, we find the information we have marked constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, SORM must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA.

You claim section 552.1175 for the remaining information. Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

...

(3) current or former employees of the [department] or of the predecessor in function of the department or any division of the department[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(3), (b). Upon review, we find none of the remaining information consists of personal information for the purposes of section 552.1175 of the Government Code. Therefore, none of the remaining information may be withheld on this basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”³ *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, SORM must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, SORM must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code, the information we have marked under section 552.101 of the Government Code in conjunction with the MPA, and the insurance policy number we have marked under section 552.136 of the Government Code. SORM 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.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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 524093

Enc. Submitted documents

c: Requestor
(w/o enclosures)