



January 29, 2015

Mr. William Clay Harris  
Office of Agency Counsel  
Legal Section MC 110-1C  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2015-01784

Dear Mr. Harris:

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# 551876 (TDI #156208).

The Texas Department of Insurance Division of Workers' Compensation (the "division") received a request for any First Reports of Injury pertaining to a specified hospital during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note a portion of the submitted information is not responsive to the present request because it was not created during the specified time period. The division need not release the non-responsive information we have marked in response to this request, and this ruling will not address that information.

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<sup>1</sup>We note the division failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. See Gov't Code § 552.301(e)(1)(D) (requiring governmental body to submit within fifteen business days of receiving request for information copy of information governmental body seeks to withhold or representative samples). Nonetheless, section 552.101 is a mandatory exception to disclosure that constitutes a compelling reason sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the applicability of this exception to the submitted information.

<sup>2</sup>We 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.

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. Section 552.101 encompasses information other statutes make confidential, such as section 81.046(b) of the Health and Safety Code, which provides as follows:

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

Health & Safety Code § 81.046(b). We note portions of the responsive information relate to cases or suspected cases of the Ebola virus. Thus, we find section 81.046 governs the release of this information, which we have marked. None of the release provisions of section 81.046 appear to be applicable. Accordingly, the division must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 402.083 of the Labor Code, which 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 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 10 (1993). However, we also have stated “[w]hether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis.” *Id.* Prior decisions of this office have found information revealing the date of injury, as well as an injured employee’s name, beneficiary name, commission 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.<sup>4</sup> You state the remaining responsive information is derived from claim files and implicitly or explicitly discloses the identities of employees who have filed workers’ compensation claims. Based on your representations and our review, we find the information we have marked implicitly or explicitly identifies workers’ compensation claimants. Therefore, the division must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. However, we find you have failed to demonstrate any portion of the remaining responsive information either implicitly or explicitly identifies employees who have filed workers’ compensation claims. Therefore, the division may not

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<sup>3</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

<sup>4</sup>The “commission” refers to the predecessor agency of the division, which was established under House Bill 7, 79th Legislature, R.S. (2005).

withhold any portion of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code.

Section 552.136 of the Government Code states “[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.”<sup>5</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the division must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

In summary, the division must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 81.046(b) of the Health and Safety Code and (2) section 402.083 of the Labor Code. The division must also withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining responsive information must be released.

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](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,



Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

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<sup>5</sup>The 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# 551876

Enc. Submitted documents

c: Requestor  
(w/o enclosures)