



February 6, 2015

Ms. Kathlyn Wilson
Director
Office of Agency Counsel
Legal Section
General Counsel Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2015-02393

Dear Ms. Wilson:

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# 553656 (TDI# 156796).

The Texas Department of Insurance (the "department") received a request for information regarding complaints and charges filed against the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider your claimed exception for the submitted information. *See id.* §§ 552.007, .302, .352.

²We assume that 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 that 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. This section encompasses section 402.092 of the Labor Code, which provides confidentiality and exceptions to confidentiality for the investigation files of the department’s Division of Workers’ Compensation (the “division”). Section 402.092 provides, in relevant part, the following:

(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 authorized 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 investigation files assembled by the division’s Office of the Medical Advisor pursuant to its statutory duties under sections 413.0511 and 413.0512 of the Labor Code. Further, you state the information is not subject to the release provisions in sections 402.092, 413.0511, 413.0513, and 413.0514 of the Labor Code. Accordingly, the department must withhold the submitted information

under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.³

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 553656

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your other arguments to withhold this information.