



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2015

Mr. Jonathan Miles
Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2015-07509

Dear Mr. Miles:

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# 561796 (DFPS ORR Request No. 02052015BHU).

The Texas Department of Family and Protective Services (the "department") received a request for the workers' compensation file of a named individual, including copies of payments for time off work, medical records, and medical bills. 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 representative sample of information.¹

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 made confidential by 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, the following:

¹ We 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.

(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 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 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). Upon review, we find the information you have marked is confidential under the MPA. Accordingly, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 412.0128 of the Labor Code, which provides that “[i]nformation in or derived from a worker’s compensation claim file regarding an employee . . . is confidential and may not be disclosed by [the State Office of Risk Management (“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 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.* We will apply the same analysis in applying section 412.0128 to the information at issue.²

²We note that although you have marked certain submitted information “402.083”, you have made no arguments with regard to the applicability of section 402.083 of the Labor Code to the submitted information. Therefore, this ruling does not address whether any of the submitted information may be confidential under that section. *See* Gov’t Code §§ 552.301, .302.

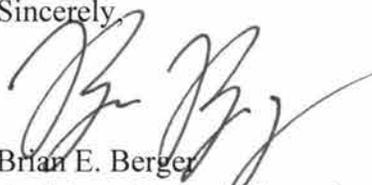
You state the remaining information was obtained from SORM, which administers the workers' compensation insurance program for state employees. Therefore, we conclude any information that explicitly or implicitly identifies a workers' compensation claimant must generally be withheld from disclosure under 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 10. In this instance, because the requestor seeks information pertaining to a named individual's compensation file, the release of any information obtained from SORM would disclose the identity of a workers' compensation claimant. As a result, the remaining information is confidential under section 412.0128. We note the requestor is the authorized representative of the employee at issue. However, neither section 412.0128 nor any other provision of the Labor Code of which we are aware provides the requestor with a right of access to this information. *Compare* Labor Code § 412.0128 (making workers' compensation claim file information held by SORM confidential) *with* Labor Code § 402.084 (listing parties to whom workers' compensation claim file information otherwise made confidential under section 402.083 may be released by the division). Accordingly, the department must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code.

In summary, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 561796

Enc. Submitted documents

c: Requestor
(w/o enclosures)