



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2015

Mr. Thomas H. Walston
General Counsel
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

OR2015-22489

Dear Mr. Walston:

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# 584755.

The State Office of Administrative Hearings ("SOAH") received a request for information pertaining to SOAH Docket No. 454-11-3602.C1. You state SOAH has released most of the requested information to the requestor. Although SOAH takes no position as to whether the remaining information is excepted under the Act, SOAH states it notified the Texas Department of Insurance (the "department") and an interested individual of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note section 148.24 of title 28 of the Texas Administrative Code describes the requirements SOAH must follow in handling requests under the Act for certain department records in SOAH's possession. *See generally* 28 T.A.C. § 148.24. Section 148.24(h) of title 28 of the Texas Administrative Code provides the following:

(h) SOAH and [the department's Division of Workers' Compensation (the "division")] have responsibilities for compliance with the [the Act]. Each agency maintains information that may be considered confidential or exempt from disclosure under laws administered by that agency. To the extent

required by law, each agency is responsible for replying to all public information requests for information maintained by that agency. Each agency will promptly notify the other agency of the receipt of a [request under the Act] relating to confidential or exempt records obtained from the other agency and will coordinate responses as necessary.

Id. § 148.24(h). We understand SOAH notified the department of the request for information pursuant to section 148.24(h). In this instance, the department argues the information at issue is confidential under section 402.092 of the Labor Code. Section 552.101 of the Government Code exempts 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 section 402.092 of the Labor Code, which 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 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).

The department states the information in Exhibits 3 through 9 is contained in an investigation file assembled by the division's Office of the Medical Advisor and the Medical Quality Review Panel pursuant to those entities' statutory duties under sections 413.0511 and 413.0512 of the Labor Code. Further, we understand the information at issue 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 SOAH must withhold Exhibits 3 through 9 under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. *See* 28 T.A.C. § 148.24(a) (providing that SOAH "shall ensure that the confidentiality provisions of Labor Code §§ 402.082-402.092 . . . will be followed, including requests for release of documents or information made confidential under the Act or other applicable law."). SOAH 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bhf

Ref: ID# 584755

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)