KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 8, 2016

Mr. Adam Mata
Staff Attorney
Office of Workers' Compensation Counsel
Legal Section
General Counsel Division
Texas Department of Insurance
7551 Metro Center Drive, Suite 100
Austin, Texas 78744-1645

OR2016-02964

Dear Mr. Mata:

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# 597271 (TDI# 167593).

The Texas Department of Insurance Division of Workers' Compensation (the "division") received a request for (1) an accounting of expenditures by the division for any and all reviewers paid to conduct a certain review; (2) a complete copy of the relevant injured worker's claim and hearing file for the worker examined by a named individual; and (3) all materials, to include benefit dispute agreements and contested case hearing decisions, concerning the employee who was examined. The division states it will withhold some of the requested information under Open Records Letter No. 2004-9096 (2004).[1] The division claims the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions the division claims and reviewed the submitted information.

[1]Open Records Letter No. 2004-9096 is a previous determination which authorized the division's predecessor to withhold, under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code, claim file information relating to a workers' compensation claimant who is identified by the requestor.

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 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, 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).

The division states the submitted information 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 the division must withhold the submitted information under

section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.[2]

The division also asks this office to issue a previous determination that would permit the division to withhold information collected, assembled, or maintained in a division investigative file pursuant to section 413.0511 or 413.0512 of the Labor Code under section 552.101 of the Government Code in conjunction with sections 402.092 and 413.0513 of the Labor Code without the necessity of requesting a decision from our office under section 552.301 of the Government Code. However, we decline to issue such a previous determination at this time. Accordingly, 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,

Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 597271

Enc. Submitted documents

c: Requestor
(w/o enclosures)

---

[2]As our ruling is dispositive, we do not address the division's remaining argument against disclosure.