



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 29, 2016

Ms. Emily McCoy  
Assistant General Counsel  
Texas Department of Insurance  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744-1645

OR2016-04748

Dear Ms. McCoy:

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# 600045 (TDI #168153).

The Texas Department of Insurance (the "department") received a request for the selection criteria data used by the department to determine which healthcare providers were to be audited. 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.<sup>1</sup>

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 of Workers' Compensation of the Department of Insurance (the "division"). Section 402.092 provides, in relevant part:

---

<sup>1</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 that those records contain substantially different types of information than that submitted to this office.

(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 state the submitted information consists of information 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, respectively. Further, you state 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 department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.092 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](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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive style with a horizontal line at the end.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 600045

Enc. Submitted documents

c: Requestor  
(w/o enclosures)