



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

June 27, 2016

Ms. T. Trisha Dang  
Assistant City Attorney  
City of Sugar Land  
P.O. Box 110  
Sugar Land, Texas 77487-0110

OR2016-14514

Dear Ms. Dang:

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# 616012.

The City of Sugar Land (the "city") received a request for information relating to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 of the Government Code encompasses information made confidential by statutes, such as section 402.083 of the Labor Code. Section 402.083 provides, in part, "[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." Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* ORD 533 at 3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Additionally, this office

has interpreted section 402.083 to generally 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.” *See* 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.* Prior decisions of this office have found information revealing the date of injury, as well as an injured employee’s name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083.<sup>1</sup>

You state the information you have marked was obtained from the division. Based on this representation and our review, we agree the information at issue is subject to section 402.083(a). Because the requestor seeks information pertaining to a named worker’s compensation claimant, release of any information obtained from the division would disclose the identity of a worker’s compensation claimant. Thus, we conclude section 402.083(a) is generally applicable to the information you have marked. In this instance, however, the requestor is the employee at issue in the information at issue. Accordingly, we will address the applicability of section 402.084 of the Labor Code.

Section 402.084 of the Labor Code provides, in relevant part, the following:

(a) The division shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division;

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the division for this purpose and provides all required information.

(b) Information on a claim may be released as provided by Subsection (a) to:

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<sup>1</sup>The “commission” refers to the predecessor agency of the division, which was established under House Bill 7, 79th Legislature, R.S. (2005).

(1) the employee or the employee's legal beneficiary[.]

Labor Code § 402.084(a), (b)(1). Section 402.084 applies to the division. Thus, the city is not subject to the release provisions of section 402.084. Accordingly, the city need not release any portion of the information at issue in accordance with section 402.084 and must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code.

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 statute, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(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.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical 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 (1987), 370 (1983), 343 (1982). Upon review, we find the information you have marked constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the city must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of

legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>2</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Upon review, we find the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information you have marked in its entirety under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code. The city must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. The city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code. The remaining information must be released.

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<sup>2</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

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,



Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/bw

Ref: ID# 616012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)