



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2016

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2016-19692

Dear Mr. Garcia, Jr.:

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# 625420.

The City of McAllen (the "city") received a request for multiple categories of information pertaining to worker's compensation claim payments. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2016-16145 (2016). In Open Records Letter No. 2016-16145, we ruled the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code, must withhold the insurance policy numbers and the bank account and routing numbers we marked under section 552.136 of the Government Code, and must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based has changed, the city must continue to rely on Open Records Letter No. 2016-16145 as a previous determination and withhold or release the identical information in accordance with that ruling.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or

¹As we are able to make this determination, we need not address the city's arguments against disclosure of this information.

is not excepted from disclosure). For the information that is not subject to Open Records Letter No. 2016-16145, we will consider the city's arguments against disclosure.

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 section 402.083 of the Labor Code, which provides "[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." Lab. Code § 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.* 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 402.083.² The city states the submitted information is obtained from claim files of the division and implicitly or explicitly discloses the identities of employees who have filed workers' compensation claims. Based on these representations and our review, we find the information we have indicated implicitly or explicitly identifies workers' compensation claimants. Therefore, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. However, we find the city has failed to demonstrate any portion of the remaining submitted information either implicitly or explicitly identifies employees who have filed workers' compensation claims. Therefore, the city may not withhold any portion of the remaining submitted information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the city has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus,

²The "commission" refers to the predecessor agency of the division, which was established under House Bill 7, 79th Legislature, R.S. (2005).

the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”³ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of this exception. Thus, the city must withhold the insurance policy numbers and the bank account and routing numbers we have indicated under section 552.136 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2016-16145 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. The city must withhold the insurance policy numbers and the bank account and routing numbers we have indicated under section 552.136 of the Government Code. The remaining information must be released.

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

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³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 625420

Enc. Submitted documents

c: Requestor
(w/o enclosures)