

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS

No. OR2005-00409

2005 Tex. AG LEXIS 408

January 12, 2005

**REQUESTBY:**

[\*1]

Mr. Elias V. Lorenzana, Jr.  
Assistant General Counsel  
Texas Workers' Compensation Commission  
7551 Metro Center Drive, Suite 100, MS-09  
Austin, Texas 78744-1609

**OPINIONBY:**

GREG ABBOTT, ATTORNEY GENERAL OF TEXAS; Caroline E. Cho, Assistant Attorney General

**OPINION:**

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216718.

The Texas Workers' Compensation Commission (the "commission") received a request for "the entire file related to VTRA#/Audit 108819 and 108820." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information. n1

n1 We assume that 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.

[\*2]

Initially, we note that the submitted information includes a completed audit that is subject to required public disclosure under *section 552.022 of the Government Code*, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Therefore, as prescribed by section 552.022, the commission must release this audit unless it is excepted from disclosure under section 552.108 or is confidential under other law. Although you claim that this information is excepted from disclosure under *sections 552.103 and 552.116 of the Government Code*, we note that these exceptions are discretionary exceptions to disclosure under the Public Information Act (the "Act") that do not constitute "other law" for purposes of section 552.022. n2 Accordingly, we conclude that the commission may not withhold the submitted audit report under *sections 552.103 and 552.116 of the [\*3] Government Code*. You further assert *sections 552.101 and 552.108 of the*

*Government Code*. Because information subject to section 552.022(a)(1) may be withheld under sections 552.101 and 552.108, we will address these assertions for the completed audit report and the remaining information.

n2 Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or which implicates the interests of third parties. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

*Section 552.101 of the Government Code* excepts from disclosure "information considered [\*4] to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You contend that the records at issue consist of information in investigation files that is confidential pursuant to *sections 402.092 and 414.005 of the Labor Code*. Section 402.092 relates to information maintained in the investigation files of the commission. *Labor Code* § 402.092. Section 402.092(c) provides that information in an investigation file that is information in or derived from a claim file is governed by the confidentiality provisions of the Labor Code relating to claim file information. *Id.* § 402.092(c). We note that the submitted information includes information derived from claim files; accordingly, we will address the applicability of *section 402.083 of the Labor Code* to this information.

Section 402.083 provides that "information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." This office has interpreted section 402.083 to protect [\*5] 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). Prior decisions of this office have found that 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 of the Labor Code*. Only in those cases where release of the employer's identity would reveal the claimant's identity may the identity of an employer be withheld. Thus, any information that consists of claim file information that implicitly or explicitly identifies claimants is confidential under *section 402.083 of the Labor Code* and must be withheld pursuant to *section 552.101 of the Government Code*.

We now turn to the remaining information at issue. *Section 414.005 of the Labor Code* [\*6] provides that the commission shall maintain an investigation unit to conduct investigations relating to alleged violations of the Texas Workers' Compensation Act (the "TWCA"), subtitle A of title 5 of the Labor Code, and commission rules. *See id.* § 414.005; *see also id.* §§ 414.001, .002. Section 402.092 provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances. n3 *See id.* § 402.092(a). An "investigation file" is "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." *Id.* § 402.092(d). *Section 414.005 of the Labor Code* provides that the commission's Compliance and Practices Division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the TWCA and commission administrative rules. *See id.* § 414.005; *see also id.* §§ 414.001, .002.

n3 The four limited circumstances are:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the commission;

(3) on a judicial determination of good cause; or

(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.

[\*7]

You inform us that the information at issue relates to possible violations of the TWCA, commission rules, and the Texas Penal Code. You state that this information is contained in investigation files maintained by the commission and is confidential under section 402.092. You also assert that the commission has not made any findings relevant to section 402.092, subsections (e) and (f) of the Labor Code, that would affect the disclosure status of the investigation files at issue. n4 Based on your representations and our review, we conclude that the remaining information is subject to *section 402.092 of the Labor Code*. A release in response to the present request would not constitute a disclosure under one of the four permissible circumstances enumerated in section 402.092(a). Therefore, the remaining information must be withheld in its entirety under *section 552.101 of the Government Code* in conjunction with *section 402.092 of the Labor Code*.

n4 These subsections provide:

(e) The commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

(1) the complaint was groundless or made in bad faith; or

(2) the complaint lacks any basis in fact or evidence; or

(3) the complaint is frivolous; or

(4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

[\*8]

In summary, to the extent the submitted information consists of claim file information that implicitly or explicitly identifies claimants, the commission must withhold such information under *section 552.101 of the Government Code* in conjunction with *section 402.083 of the Labor Code*. The remainder of the submitted information must be withheld under *section 552.101 of the Government Code* in conjunction with *section 402.092 of the Labor Code*. n5

n5 As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Furthermore, this letter ruling shall serve as a previous determination under section 552.301 of the Act that information in a commission investigative file maintained under *section 414.005 of the Labor Code* is excepted from public disclosure under *section 552.101 of the Government Code* [\*9] in conjunction with *section 402.092 of the Labor Code*, unless the information is subject to the release provision of subsection 402.092(a), (e), or (f) of the Labor Code or is claim file information subject to subsection 402.092(c) of the Labor Code. See *Gov't Code § 552.301(a), (f)*; Open Records Deci-

sion No. 673 (2001). In addition, this previous determination is not applicable to information to which the requestor may have a right of access under another provision of law. *See, e.g., Occ. Code § 159.002 et seq.* (medical records); *id.* § 201.402 *et seq.* (chiropractic records); *id.* § 258.102 *et seq.* (dental records); *Health & Safety Code § 611.002 et seq.* (mental health records). So long as the elements of law, fact, and circumstances on which this ruling is based do not change so as to no longer support the findings set forth above, the commission need not request a decision under the Act again with regard to the type of information that is the subject [\*10] of this ruling. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, [\*11] the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. *Gov't Code § 552.325*. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

### **Legal Topics:**

For related research and practice materials, see the following legal topics:  
GovernmentsLocal GovernmentsClaims By & AgainstLabor & Employment LawEmployment RelationshipsEmployment ContractsConditions & TermsTrade Secrets & Unfair CompetitionNoncompetition & Nondisclosure AgreementsWorkers' Compensation & SSDIAdministrative ProceedingsClaimsFiling Requirements