



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Ms. Cynthia Villarreal-Reyna
Director - Office of Agency Counsel
Legal Section MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2012-13489

Dear Ms. Villarreal-Reyna:

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# 463263 (TDI # 128374).

The Texas Department of Insurance, Division of Workers' Compensation (the "division") received a request for forty-nine specified Medical Fee Dispute Resolution ("MFDR") files. You claim the requested 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.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent part:

¹We 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 those records contain substantially different types of information than that submitted to this office.

(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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). This office has concluded that 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). We have further found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 (1990).

Upon review, we find the information you contend is subject to the MPA consists of purely administrative and billing records that do not pertain to the diagnosis and treatment of patients. Therefore, these records may not be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also 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 except as provided by this subtitle or other law." Labor Code § 402.083(a). 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.* You explain that although the requestor identified the files he is seeking by their MFDR tracking numbers, he previously requested the same information identified by MFDR tracking numbers and corresponding injured employee names. You assert, therefore, that release of any of the requested information, even if redacted, would reveal the identity of the injured employee in each MFDR file. Thus, we conclude that section 402.083 is generally applicable to the submitted information. In this instance, however, section 402.084 may apply because the requestor states he is the legal

representative of the hospital which employed the individuals at issue at the time of their injuries. Accordingly, we will address the applicability of section 402.084.

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

(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 Subsection (a) to:

...

(3) the employer at the time of injury[.]

Labor Code § 402.084(a), (b)(3). Whether the requestor would be qualified to receive the submitted confidential claimant information presents, in part, a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Thus, if the division determines the requestor is eligible to receive the submitted information under section 402.084 of the Labor Code, then the division must release the submitted information in accordance with that section. However, if the division determines the requestor is not eligible to receive the submitted information under section 402.084 of the Labor Code, then the division must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 402.083 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, reading "Kathryn R. Mattingly". The signature is written in dark ink and is positioned to the right of the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 463263

Enc. Submitted documents

c: Requestor
(w/o enclosures)