



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2016

Ms. Emily McCoy
Director, Workers' Compensation Counsel
Texas Department of Insurance
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

OR2016-19042

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# 623773 (TDI #173637).

The Texas Department of Insurance Division of Workers' Compensation (the "division") received a request for information pertaining to investigations of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us Exhibits C, D, and E were the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-14096 (2016). In that ruling, we determined the division must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the division must continue to rely on Open Records Letter No. 2016-14096 as a previous determination and withhold Exhibits C, D, and E in accordance with that ruling. *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 is not excepted from 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 encompasses section 402.092 of the Labor Code, which provides confidentiality and exceptions to confidentiality for the investigation files of the division. Section 402.092 provides, in relevant part, the following:

(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).

The division states the remaining information is 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. Further, we understand 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 division must withhold the remaining information under

section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.¹

In summary, the division must continue to rely on Open Records Letter No. 2016-14096 as a previous determination and withhold Exhibits C, D, and E in accordance with that ruling. The division must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.

The division also asks this office to issue a previous determination that would permit the division to withhold information collected, assembled, or maintained in a division investigative file pursuant to section 413.0511 or 413.0512 of the Labor Code under section 552.101 of the Government Code in conjunction with sections 402.092 and 413.0513 of the Labor Code without the necessity of requesting a decision from our office under section 552.301 of the Government Code. However, we decline to issue such a previous determination at this time. Accordingly, 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 623773

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address the division's remaining arguments against disclosure.