



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2017

Ms. Kathleen Contreras
Legal Services Coordinator
Office of Injured Employee Counsel
7551 Metro Center Drive, Suite 100
Austin, Texas 78744

OR2017-22124

Dear Ms. Contreras:

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# 677695.

The Office of Injured Employee Counsel (the "OIEC") received a request for information pertaining to the requestor's employment with the OIEC.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.117, and 552.136 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body

¹We note the OIEC sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note the OIEC marked some documents under section 552.111 of the Government Code. However, the OIEC did not submit any arguments to support its assertion under this exception. Therefore, we understand the OIEC to have withdrawn its assertion under this exception.

has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you marked in Attachment D and Attachment E consists of communications between OIEC attorneys and OIEC employees that were made for the purpose of providing legal advice to the OIEC. You state the communications were intended to be confidential and have remained confidential. Additionally, you state the information in Attachment F is a draft document prepared by an attorney for the OIEC. You state the draft was not distributed, but was part of the process of providing legal opinions or advice to the OIEC. Upon review, we find the OIEC has demonstrated the applicability of the attorney-client privilege to some of the information at issue. Therefore, with the exception of the information we marked for release, the OIEC may withhold the information it marked under section 552.107(1) of the Government Code.³ We find the OIEC has not demonstrated

³As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

the remaining information it marked documents an attorney-client communication. Accordingly, the OIEC may not withhold any of the remaining information at issue under section 552.107 of the Government 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. This exception encompasses information other statutes make confidential, including section 404.111 of the Labor Code, which provides, in part:

(a) When assisting an injured employee, the [OIEC] is entitled to the same access to information related to the employee’s injury and workers’ compensation claim as the employee or any other party to the claim.

...

(e) The [OIEC] may not make public any confidential information provided to the [OIEC] under this chapter. . . . The [OIEC] may not release, and an individual or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a health care provider or an injured employee; [or]

(2) reveals the zip code of an injured employee’s primary residence[.]

...

(f) Information collected or used by the [OIEC] under this chapter is subject to the confidentiality provisions and criminal penalties of Section 402.091 [of the Labor Code].

(g) Information on health care providers and injured employees that is in the possession of the [OIEC], and any compilation, report, or analysis produced from the information that identifies providers and injured employees, is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

Labor Code § 404.111(a), (e)-(g); *see also id.* § 404.002 (establishing the OIEC). Section 402.091 of the Labor Code makes it a criminal offense to “knowingly, intentionally, or recklessly publish[], disclose[], or distribute[] information that is confidential under [subchapter E of chapter 402 of the Labor Code] to a person not authorized to receive the

information directly from the [Division of Workers' Compensation of the Texas Department of Insurance (the "division")].” *Id.* § 402.091(a). Section 402.083 of the Labor Code is part of subchapter E of chapter 402 and provides, in part, that “[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.” *Id.* § 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). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee’s name, beneficiary name, claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore confidential under section 402.083.

You state the information you marked in Attachment D and Attachment E constitutes claim information made confidential under section 402.083 of the Labor Code. You indicate this information was obtained from the division’s claim files pursuant to the access granted to the counsel under section 404.111 of the Labor Code. Based on your representations and our review, we find the information you marked implicitly or explicitly identifies injured employees. Thus, we conclude the OIEC must withhold the information it marked in Attachment D and Attachment E under section 552.101 of the Government Code in conjunction with section 404.111(e) of the Labor Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

Upon review, we find some of the information you marked is subject to section 552.117(a)(1) of the Government Code. Accordingly, with the exception of the information we marked for release, the OIEC must withhold the cellular telephone number it marked under section 552.117(a)(1) of the Government Code to the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the

Government Code and the cellular telephone service is not paid for by a governmental body. Conversely, if the employee at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the OIEC may not withhold the information at issue under section 552.117(a)(1). However, we find none of the remaining information constitutes the home address or telephone number, emergency contact information, social security number, or family member information of a current or former official or employee of the city under section 552.117(a)(1). Thus, the OIEC may not withhold any portion of the remaining information under section 552.117(a)(1).

Section 552.136 of the Government Code provides, "Notwithstanding 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the OIEC must withhold the information it marked under section 552.136 of the Government Code.

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.⁴ *See* Gov't Code § 552.130(a). We find portions of the remaining information consist of motor vehicle record information. Accordingly, the OIEC must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

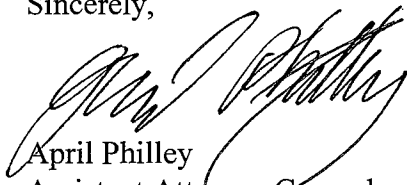
In summary, with the exception of the information we marked for release, the OIEC may withhold the information it marked under section 552.107 of the Government Code. The OIEC must withhold the information it marked in Attachment D and Attachment E under section 552.101 of the Government Code in conjunction with section 404.111(e) of the Labor Code. With the exception of the information we marked for release, the OIEC must withhold the cellular telephone number it marked under section 552.117(a)(1) of the Government Code to the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body. The OIEC must withhold the information it marked under section 552.136 of the Government Code. The OIEC must withhold the information we marked under section 552.130 of the Government Code. The OIEC must release the remaining information.

⁴The 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).

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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 677695

Enc. Submitted documents

c: Requestor
(w/o enclosures)