



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 29, 2017

Ms. Jennifer Nguyen
Assistant General Counsel
Division of Workers' Compensation
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2017-27190

Dear Ms. Nguyen:

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# 685815 (TDI ORR# 188006)

The Texas Department of Insurance (the "department") received a request for 13 categories of information pertaining to investigations of and complaints made against a named individual. You state you have released some information. You state the department is withholding some information in accordance with a previous determination issued in Open Records Letter No. 2005-00409 (2005).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

¹Open Records Letter No. 2005-00409 authorizes the department to withhold under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code, without the necessity of requesting a decision under the Act, an investigative file maintained under section 414.005 of the Labor Code unless the information is subject to the release provisions found in section 402.092 or other provisions of law or is claim file information subject to section 402.092(c). *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

provides confidentiality and exceptions to confidentiality for the investigation files of the Division of Workers' Compensation of the Department of Insurance (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 department states the submitted information is contained in investigation files 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 department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.

The department also asks this office to issue a previous determination that would permit the department 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 685815

Enc. Submitted documents

c: Requestor
(w/o enclosures)