



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2019

Ms. Jennifer Nguyen
Assistant General Counsel
Texas Department of Insurance
Mail Code 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2019-07636

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# 755367 (ORR Nos. R002582 & R002704).

The Texas Department of Insurance Division of Workers' Compensation (the "division") received two requests from the same requestor for workers compensation data.¹ The division claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the division claims and reviewed the submitted representative sample of information.² We have also received and considered

¹The division states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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.

comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor argues the division has previously released to a different requestor the information the division now seeks to withhold. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code. § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the division may not now withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. The division seeks to withhold the requested information under section 552.101 of the Government Code. Section 552.101 protects information made confidential under law. Thus, to the extent any portion of the submitted information has been previously released, we will nevertheless address the division's arguments under section 552.101 against disclosure of such information, as well as against disclosure of any remaining 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 information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (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.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office

has concluded 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). The division informs us some of the submitted information, which we noted, consists of information that was obtained from a patient's medical records. Accordingly, the division must withhold the information we noted under section 552.101 of the Government Code in conjunction with the MPA.³

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[.]” Lab. Code § 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). 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.* Prior decisions of this office have found 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 402.083.⁴ The division asserts the remaining information is derived from claim files and implicitly or explicitly discloses the identities of employees who have filed workers’ compensation claims. Based on the division’s representations and our review, we find some of the remaining information, which we have noted, implicitly or explicitly identifies a workers’ compensation claimant. Therefore, the division must withhold the information we noted under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. However, we find the division has failed to demonstrate any portion of the remaining information either implicitly or explicitly identifies employees who have filed workers’ compensation claims. Therefore, the division may not withhold any portion of the remaining information under section 552.101 in conjunction with section 402.083.

In summary, the division must withhold the information we noted under section 552.101 of the Government Code in conjunction with the MPA. The division must withhold the information we noted under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. The division must release the remaining information.

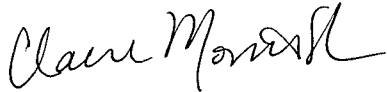
³As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

⁴The “commission” refers to the predecessor agency of the division, which was established under House Bill 7, 79th Legislature, R.S. (2005).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 755367

Enc. Submitted documents

c: Requestor
(w/o enclosures)