



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

February 28, 2020

Ms. Cynthia Tynan  
Assistant General Counsel & Public Information Coordinator  
University of Texas System  
210 West 7th Street  
Austin, Texas 78701

OR2020-06492

Dear Ms. Tynan:

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# 814106 (OGC# 193972).

The University of Texas Medical Branch at Galveston (the "university") received a request for the requestor's employment file. You state the university has redacted some of the submitted information in accordance with the previous determination issued in Open Records Letter No. 2016-13184A (2016). *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of the Texas Department of Criminal Justice (the "department"). Accordingly, you state, and provide documentation showing, you notified the department of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." *Id.* § 552.101. Section 552.101 encompasses section 161.032 of the Health and Safety Code, which provides, in relevant part:

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<sup>1</sup> As of this date, we have not received comments from the department explaining why the submitted information should not be released.

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(c), (e), (f). You argue the some of the submitted information consists of records of the university's Office of Institutional Compliance ("OIC"). You state the OIC initiated an investigation of a complaint pursuant to the university's compliance program. You indicate the compliance program was developed pursuant to the guidelines issued by the Office of Inspector General of the United States Department of Health and Human Services. You explain the information at issue was created for and is part of the compliance file for the complaint at issue and is not maintained in the regular course of business. *Cf. Texarkana Mem'l Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Based on your representations and our review, we conclude the information you marked consists of records, information, or reports of a compliance officer acting under subchapter D of chapter 161 of the Health and Safety Code. Therefore, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information made confidential by statutes, such as section 402.083 of the Labor Code. Section 402.083 provides, in part, "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation for the Texas Department of Insurance (the "division")] except as provided by this subtitle or other law." Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* ORD 533 at 3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Additionally, 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.* 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.<sup>2</sup>

You assert some of the remaining information is derived from claim files obtained from the division and implicitly or explicitly discloses the identity of an employee who filed a workers’ compensation claim. Based on your representation and our review, we agree the information at issue is subject to section 402.083(a). Because the requestor seeks information pertaining to a named worker’s compensation claimant, release of any information obtained from the division would disclose the identity of a worker’s compensation claimant. Thus, we conclude section 402.083(a) is generally applicable to the information you indicated. In this instance, however, the requestor is the employee at issue in the information at issue. Accordingly, we will address the applicability of section 402.084 of the Labor Code.

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

(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 by Subsection (a) to:

(1) the employee or the employee’s legal beneficiary[.]

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<sup>2</sup>The “commission” refers to the predecessor agency of the division, which was established under House Bill 7, 79th Legislature, R.S. (2005).

Labor Code § 402.084(a), (b)(1). Section 402.084 of the Labor Code applies to the division. Thus, the university is not subject to the release provisions of section 402.084 of the Labor Code. Accordingly, the university need not release any portion of the information at issue in accordance with section 402.084 of the Labor Code and must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code.

In summary, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code. The university must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Sean McCormick  
Attorney  
Open Records Division

SMC/mo

Ref: ID# 814106

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)