



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2020

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2020-13002

Dear Ms. Hojem:

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# 826959 (Ref. No. 2020-0356).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for a list of worker's compensation claims resolved during a specified time period. 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 representative sample of information.¹

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 of the Government Code encompasses information made confidential by other statutes, such as section 402.083 of the Labor Code, which 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 of 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 Worker's Compensation Commission, and now the division. *See* ORD 533 at 3-6; *see also* Labor

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Based on this analysis, information in the possession of the authority that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although the authority asserts some of the submitted information is confidential pursuant to section 402.083, the authority provides no representation, and the documents do not reflect, the authority received these records from the division. Therefore, the authority has failed to demonstrate the applicability of section 402.083 to any of the information at issue. Thus, the authority may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 402.083(a) of the Labor Code.

Section 552.101 of the Government Code also encompasses section 402.092 of the Labor Code, which provides, in relevant part:

- (a) In this section, “investigation file” means any information compiled or maintained by the division with respect to a division investigation authorized under this subtitle or other workers’ compensation law...
- (b) Information maintained in the investigation files of the division is confidential and may not be disclosed except [in five specified situations].
- (c) Division investigation files are not open records for purposes of Chapter 552, Government Code.

Labor Code § 402.092(a)-(c). Although the authority asserts the submitted information is confidential pursuant to section 402.092, the authority provides no representation, and the documents do not reflect, these records consist of information maintained in the investigation files of the division. Therefore, the authority has failed to demonstrate the applicability of section 402.092 to any of the information at issue. Thus, the authority may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 402.092(a) of the Labor Code.

We note some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the authority must release the submitted information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jxd

Ref: ID# 826959

Enc. Submitted documents

c: Requestor
(w/o enclosures)