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January 30, 1991

Mr. Gerald Geddes  
Chairman  
Industrial Commission  
STATEHOUSE MAIL

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Public Records Law

Dear Commissioner Geddes:

You have asked for the opinion of this office as to the obligation of the Industrial Commission to furnish copies of its worker's compensation insurance claims data base to individuals requesting same pursuant to the newly enacted Idaho Public Records Law, Idaho Code §§ 9-337 to 9-348. It is our understanding that the data base, if supplied to certain commercial entities, could be used to deny work to employees with prior injuries and a history of worker's compensation claims – thus frustrating the purpose of the Idaho Worker's Compensation Law. As a related inquiry, you have asked whether the Commission or its members would incur potential civil liability under federal law or regulations, if an action were filed by an injured worker claiming to be damaged by the Commission's release of the information, and whether such liability would be a sufficient basis for refusing to disclose the information.

As a starting point, it should be noted that the definition of "public record" in the law is broad enough to encompass the computer data base. "Public record" is defined in Idaho Code § 9-337(10) as "any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics." Section 9-337(12) of the Public Records Law, in defining "writing," includes "every means of recording, including . . . magnetic or paper tapes, photographic films and documents." Section 9-338(8) also contains references to charges for copies of computer tapes, discs or similar records, further establishing that this general type of record is subject to disclosure under the law.

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In general, the Public Records Law provides that all public records in Idaho are open at all times for inspection except as otherwise expressly provided by statute. Idaho Code § 9-338(1). Our review of the worker's compensation statute, title 72, chapters 1-8, of the Idaho Code, reveals no express statutory provision that would render worker's compensation claim information confidential, nor do there appear to be other statutes that would render such information confidential. Thus, an exemption to disclosure, if one exists, would have to arise under the exemption section of the public records law, which is found in Idaho Code § 9-340.

To the extent that your claims data base would contain actual records of hospital care, medical records, records of psychiatric care or treatment, or professional counseling records, this part of the data base would not be subject to disclosure. Idaho Code § 9-340(26). However, it is our opinion that this exemption is not broad enough to prevent disclosure of information such as the name or social security number of an injured claimant, the nature of the injury, the name of the employer for whom he or she was working at the time, or the dollar amount of medical bills.

The only other exemption arguably applicable to the records in question is the catchall provision exempting from disclosure "any public record exempt from disclosure by federal or state law or federal regulation." Idaho Code § 9-340(1). Were there a controlling federal or state court decision or statute expressly prohibiting disclosure of the information, it could then be argued that the information is "exempt from disclosure by federal or state law"; however, our research has found no such decision or statute.

As a related question, you inquire whether there would be potential liability under such statutes as 42 U.S.C. § 1983 for release of the information, and, if so, whether such potential liability would be grounds for not releasing the information.

Our research has failed to disclose any cases under 42 U.S.C. § 1983 that have found liability on the part of a state agency for disclosing worker's compensation claims information. In general, a party seeking to establish a cause of action under such section must prove the violation of an underlying right guaranteed by federal law. See, Blaylock v. Schwinden, 856 P.2d 107 (9th Cir. 1988). Though not decided under 42 U.S.C. § 1983, the court in Industrial Foundation of the South v. Texas Ind. Acc. Bd., 540 S.W.2d 668 (Tex. 1976), did hold that release of worker's compensation claims information does not violate an injured claimant's federal constitutional right to privacy. Nor, it seems, could the injured worker bring such a cause of action as a member of any arguably suspect class.

It should also be noted that state officials performing a discretionary function are protected from liability for civil damages under section 1983 so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. Harlow v. Fitzgerald, 457 U.S. 800 (1982). Such conduct will be protected, for instance, where there is no controlling case law at the time of the alleged constitutional violation. Lum v. Jensen, 876 F.2d 1385 (9th Cir. 1989).

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It is therefore the opinion of this office that the Industrial Commission does not have a legal basis for a refusal to furnish a copy of its worker's compensation claim data base pursuant to a request made under Idaho's Public Records Law, except to the extent that the data base contains records of hospital care, medical records, records of psychiatric care, or counseling records. It is also the opinion of this office that the release of such information does not create the potential for civil liability under 42 U.S.C. § 1983. Thus, the records in question are subject to disclosure under the Idaho Public Records Law.

Sincerely,



John J. McMahon  
Chief Deputy Attorney General

JJM/st