

Chapter 57 – REQUEST FOR CASE FOLDERS AND CERTIFICATIONS OF ACTIONS OF THE BOARD
Repeal 28 Texas Administrative Code (TAC) §§57.5, 57.10 and 57.15

1. INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) adopts the repeal of 28 TAC §57.5, concerning request for copies or statistical information, 28 TAC §57.10, concerning written request for public information and 28 TAC §57.15, concerning telephone request for public information.

The repeal of 28 TAC §§57.5, 57.10 and 57.15, is adopted without changes to the proposed repeal as published in the December 2, 2016, issue of the *Texas Register* (41 TexReg 9446) and the text of the repealed sections will not be published. The division did not receive comments and there was no request for a public hearing submitted to the division.

2. REASONED JUSTIFICATION. Government Code §2001.033 requires a summary of comments and the factual basis for the repeal. The division adopts the repeal of 28 TAC §§57.5, 57.10 and 57.15, which were adopted to be effective November 20, 1977 (2 TexReg 4322), because those sections are outdated and no longer necessary since other statutes and rules currently govern requests for public information and access to division records. Title 28 TAC §§57.5, 57.10, and 57.15 pertain to requests for records compiled by the Industrial Accident Board, and the purpose of these rules was to ensure compliance with Texas Civil Statutes Article 8307 §9, §9(a) and Article 6252-§17a, known as the Open Records Act. However, during the 71st Legislature, 2nd Called Session, the former Texas Civil Statutes Article 8307 §9, and §9(a) were repealed and the Industrial Accident Board became the Texas Workers' Compensation Commission and the Texas Workers' Compensation Act was enacted in Chapter 1 of the Texas Civil Statutes Article 8308. After the

repeal of Article 8307, the Texas Civil Statutes Article 8307 §9(a), which provided for confidentiality of records and fraudulent claims, was re-codified in Articles 8308-2.31 through 8308-2.34 and Article 8308-10.04. Subsequently, the 73rd Legislature repealed Article 8308 and the statute was re-codified in Labor Code Chapter 402. The Texas Civil Statutes Article 8307 §9, which provided for certified copies of records and fees, was re-codified to Labor Code §502.063. The 73rd Legislature also repealed Texas Civil Statutes Article 6252-§17a and the statute was re-codified in the Government Code Chapter 552, known as the Public Information Act. Thus, historical changes in the Texas workers' compensation system along with statutory repeals and re-codifications have resulted in latter statutory authority governing the request for public information.

The subject matter addressed by 28 TAC §§57.5, 57.10, and 57.15 is currently governed by Government Code Chapter 552, known as the Public Information Act; Labor Code §402.081, concerning division records; Labor Code §402.090, concerning statistical information; Labor Code §402.087, concerning information available to prospective employers; 1 TAC Chapter 70, concerning Cost of Copies of Public Information; and 28 TAC §108.1, concerning charges for copies of public information. Every section of Chapter 57 adopted for repeal has a more recent statutory or regulatory analogue, which articulates the law governing access to division records and requests for public information. Specifically, 28 TAC §57.5 addresses requests for certified copies or statistical information and rules regarding fees for those requests. Labor Code §402.081 relates to division records, including providing copies and certification of records. Labor Code §402.090 relates to the release of statistical information. Additionally, 28 TAC §108.1 addresses charges for copies of public information and 1 TAC Chapter 70 addresses Cost of Copies of Public Information. Title 28 TAC §57.10 addresses written requests for public information from prospective employers and 28 TAC

§57.15 addresses telephone requests for public information from prospective employers. Labor Code §402.087 relates to written and telephone requests of information available to prospective employers. The division adopts repeal of 28 TAC §§57.5, 57.10, and 57.15 because these rules are no longer necessary.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSES. The division did not receive any comments on the proposed repeal.

4. STATUTORY AUTHORITY. The repeal is adopted under Government Code §2001.039, Labor Code §402.00111 and §402.061.

Government Code §2001.039 requires state agencies to review and consider re-adoption, re-adoption with amendments or repeal of its rules no later than the fourth anniversary of the rule effective date. Labor Code §402.00111 requires the commissioner of workers' compensation to exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

No other codes, statutes, or articles are affected by this adoption.

5. TEXT.

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§57.5. Request for Copies or Statistical Information.

§57.10. Written Request for Public Information.

§57.15. Telephone Request for Public Information.

6. CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued at Austin, Texas, on January 11, 2017.

X

Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of
Workers' Compensation

The commissioner adopts the repeal of 28 TAC §57.5, concerning request for copies or statistical information, 28 TAC §57.10, concerning written request for public information and 28 TAC §57.15, concerning telephone request for public information.

W. Ryan Brannan
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. _____

ATTEST:

X

Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation

COMMISSIONER'S ORDER NO. _____