



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1991

Ms. Susan M. Kelley
General Counsel
Texas Workers' Compensation Commission
Southfield Building
4000 South IH-35
Austin, Texas 78704

OR91-631

Dear Ms. Kelley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14234.

You have received two requests for 33 categories of information relating to a court case that involves certain workers' compensation issues. You claim portions of the requested information are excepted from required public disclosure under sections 3(a)(1), 3(a)(7), and 3(a)(11) of the Open Records Act.

You assert that the request for information is broad and portions of it are unclear. You advise us that you have asked the requestor to clarify item nos. 6, 16, 21, 25, 26, and 32 and that you are unable at this time "to produce documents for examination, or to request an opinion" from the Office of Attorney General as regards these items. When a governmental body is presented with an unclear request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow his request. Open Records Decision No. 561 (1990) at 8-9. Once you have clarified the contents of the request, you must release the requested information within ten days or request an open records decision from this office.

You also assert that some of the information sought in items 17 and 30 is not yet in your possession but to be produced at a future date. A governmental body need not comply with a standing request to provide information "on a periodic basis." Open Records Decision No. 465 (1987) at 1. Similarly, a governmental body need not treat a request as embracing information prepared after the request was made. Open Records Decision No. 452 (1986) at 3.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory or by judicial decision." Article 8308-2.31, V.T.C.S., provides in part:

(a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this Act.

....

(c) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (d) of this section if:

(1) the claim is open or pending before the commission, on appeal to a court of competent jurisdiction, or the subject of a subsequent suit where 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 developed by the commission for this purpose and provides all required information.

(d) Information on a claim may be released as provided in Subsection (c) of this section to:

(1) the employee or the employee's legal beneficiary.

In 1989 this office held that information contained in workers' compensation files held by the Industrial Accident Board (now the Workers' Compensation Commission) is confidential. Open Records Decision No. 533 (1989) at 3-4. You indicate that some of the requested workers' compensation files relate to the requestor. Such information, provided that the conditions of subsection (c) as set out above are met, must be released. However, files other than those of the requestor must be withheld.

You next claim that information containing legal advice given by the commission's counsel is excepted from required public disclosure by section 3(a)(7). Section 3(a)(7) excepts:

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rule and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure.

We have examined the information submitted to us for review for which you claim the 3(a)(7) exception and conclude that it may be excepted from required public disclosure in its entirety. *See* Open Records Decision No. 574 (1990).

Section 3(a)(11) excepts from required public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The test under section 3(a)(11) is whether interagency or intra-agency information consists of advice, opinion, or recommendation that is used in the deliberative process. Facts and written observation of facts and events, when such information is severable from advice, opinion, or recommendation, cannot be withheld under section 3(a)(11). *See generally* Open Records Decision No. 213 (1978). As for drafts, Open Records Decision No. 559 (1990) (copy enclosed) held that

where a document is genuinely a preliminary draft of a document that has been released or is intended for release in a final form, the draft necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document. In such an instance, the draft itself, as well as comments made on the draft, underlining, deletions, and

proofreading marks would qualify for exemption under section 3(a)(11). Purely factual matter, where severable, must be released.

You assert that the requested information includes the "recommended draft of letter never sent." We have examined this letter and conclude that it may be excepted in its entirety from required public disclosure under section 3(a)(11). We have marked the portions of the remaining documents that include advice, opinion, and recommendation and thus may be withheld from required public disclosure under section 3(a)(11). The remaining information submitted must be disclosed.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-631.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/GK/lcd

Enclosures: Marked Documents

Ref.: ID# 14234

cc: Mr. Harold R. Barker
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Dallas, Texas 75231
(w/o enclosures)