



Office of the Attorney General  
State of Texas

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copy*

DAN MORALES  
ATTORNEY GENERAL

September 2, 1992

Mr. Todd K. Brown  
Acting Executive Director  
Texas Workers' Compensation Commission  
Southfield Building  
4000 South IH-35  
Austin, Texas 78704

OR92-529

Dear Mr. Brown:

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# 16364.

The Texas Workers' Compensation Commission (the "commission") has received a request for information relating to the commission's Extra-Hazardous Employer Program. Specifically, the requestor seeks "[a]ll documentation, including but not limited to copies of, dates sent and responses to, letters by the TWCC to all Texas employers that had been identified as 'extra hazardous' by the TWCC . . . [including] the responses by company officials who were asked to verify the data used by the commission." You claim that some of the requested information is exempted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with articles 5221b-9(g) and 8308-2.31, V.T.C.S. You also claim that the requested information is exempted by section 3(a)(3).

Because it is most inclusive, we address your section 3(a)(3) claim first. Section 3(a)(3) exempts from required public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various

political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). When parties to litigation have been provided with the information at issue, however, section 3(a)(3) does not protect it from further disclosure. Open Records Decision No. 493 (1988) at 2.

You advise us that the commission notifies employers who have been identified as extra-hazardous. Notification of such is reflected in documents submitted to us for review as Item 1. Pursuant to article 8308-7.04(h), V.T.C.S., employers identified as extra-hazardous may in turn request an APTRA hearing to contest this determination. Documents submitted to us for review as Item 2 reflect the responses of the employers to their identification as extra-hazardous employers. Clearly, the documents at issue here have all been made available to both parties in the anticipated litigation. Accordingly, the section 3(a)(3) exception does not apply.

You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that some of the information contained in items 1 and 2, specifically, Standard Industrial Classification (SIC) codes and the number of employees for each employer, is excepted from required public disclosure by article 5221b-9(g), V.T.C.S., which authorizes TEC to collect information from employers by inspecting employer records and by requiring employers to submit reports. That provision also provides that:

[i]nformation thus obtained or otherwise secured shall not be published or be open to public inspection...except as the Commission may deem necessary for the proper administration of this Act.

In Open Records Decision No. 599 (1992) (copy enclosed), this office has determined that the confidentiality of this provision extends to any information that the Texas Employment Commission obtains or collects in employment records and reports.

You advise us that the SIC codes and the number of employees for each employer were provided to the commission by the Texas Employment Commission. Information may be transferred from one governmental body to another without impairing confidentiality if a statute or contract requires that the records remain confidential in the recipient's custody. Open Records Decision Nos. 424, 417 (1984). Article 8308-7.03, V.T.C.S., provides, in pertinent part, that the commission "is authorized, empowered, and directed to obtain from any state agency, including . . . the Texas Employment Commission, data and statistics." Article 8308-7.03, V.T.C.S, specifically provides that the commission shall collect specific data, including SIC information. V.T.C.S. art. 8308-7.03 § (c). An agreement titled "Information Exchange Agreement between Texas Employment Commission and Texas Workers' Compensation Commission" governs the exchange of information between the two agencies contemplated by article 8308-7.03, V.T.C.S. The agreement provides that the commission is to maintain the confidentiality of the employment information it obtains from the Texas Employment Commission.

You have marked the information in items 1 and 2 that were provided the commission pursuant to the agreement. On the basis of the agreement, we conclude that this information is excepted from required public disclosure under section 3(a)(1) of the Open Records Act in conjunction with article 5221b-9(g), V.T.C.S., and must not be released.

You also claim that some of the requested information is excepted from required public disclosure by article 8308-2.31, V.T.C.S., which makes confidential, with certain exceptions we do not understand to be applicable here, "information in or derived from a claim file."<sup>1</sup> See also confidentiality provisions of former article 8307, § 9a, V.T.C.S., which were repealed with adoption of the 1989 Workers' Compensation Act. Acts 1989, 71st Leg., 2d C.S., ch. 1, § 16.01. In our opinion, the statutory confidentiality provisions in question are broad enough to protect any information held by the commission relating to specific claims. See Open Records Decision No. 533 (1989).

You have marked the information in items 1 and 2 that you claim are made confidential by 8308-2.31, V.T.C.S. We have examined the documents submitted to us for review and conclude that this information must be withheld from required

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<sup>1</sup>We note that article 8308-2.31, V.T.C.S., expressly does *not* make confidential "[i]nformation concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 10.04 of [the Texas Workers' Compensation] Act or section 32.51, Penal Code."

public disclosure under section 3(a)(1) of the Open Records Act. The remainder of the requested information - i.e., that which we have not determined to be exceptable under article 5221b-9(g) or article 8308-2.31 -- however, must be released.

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 OR92-529.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

WW/GCK/lmm

Enclosure: Open Records Decision No. 599

Ref.: ID# 16364  
ID# 16581  
ID# 16488

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