



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1995

Ms. Gloria A. Reyes
Assistant General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR95-1145

Dear Ms. Reyes:

You ask this office to reconsider our decision in Open Records Letter No. 94-596 (1994). Your request for reconsideration was assigned ID# 30626.

In Open Records Letter No. 94-596 (1994) this office concluded that the Texas Worker's Compensation Commission (the "commission") had not established that litigation was reasonably anticipated for purposes of section 552.103 of the Government Code. The commission requested reconsideration of that ruling on November 30, 1994, asserting that a lawsuit had been filed against the commission on October 6, 1994.

You state in your letter of November 30, 1994, that "[i]n accordance [with] the ruling we contacted the requestor and explained that we needed prior payment for the copies. The requestor failed to pay until now, however, we have since been sued." We note, however, that the commission was notified of the lawsuit on October 6, 1994. There is no indication in the file that the commission attempted to inform this office of that fact until November 30. Moreover, it appears that the commission did not attempt to notify the requestor that it would request reconsideration of our ruling based on the changed circumstances and that therefore the requested records would not be released.

When seeking a ruling from this office, the governmental body has the burden to prove that an exception applies to requested information. See Open Records Decision No. 542 (1990), Attorney General Opinion H-436 (1974); see also Gov't Code § 552.301(b) (requiring governmental body that wishes to withhold information to submit

reasons for doing so). In light of the temporal nature of section 552.103(a) and the governmental body's duty to establish the applicability of the exceptions it claims, we believe the act requires a governmental body raising section 552.103(a) to provide this office with information about new and significant developments concerning the anticipated litigation. Furthermore, we believe that a governmental body must provide to this office new information regarding the litigation in a timely manner.

Although you have provided new information that a lawsuit has in fact been filed regarding this matter, you notified this office of that fact nearly two months after the commission received notice of the lawsuit. Because the commission failed to timely notify this office of the changed circumstances, we decline to reconsider the conclusion reached in Open Records Letter No. 94-596 (1994). The commission must therefore promptly release the records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 30626

Enclosures: Submitted documents

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