



## Office of the Attorney General

State of Texas

March 31, 1997

DAN MORALES

ATTORNEY GENERAL

Ms. Susan M. Cory  
General Counsel  
Texas Workers' Compensation Commission  
Southfield Building, MS-4D  
4000 South IH-35  
Austin, Texas 78704-7491

OR97-0653

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104738.

The Texas Workers' Compensation Commission (the "commission") received a request for the internal employee investigation concerning the requestor, including any references and a specific personnel manual policy. You claim only that the internal investigation materials are excepted from required public disclosure by sections 552.101, 552.108, and 552.111 of the Government Code. We presume therefore that the personnel policy has been released. The requestor has also informed this office that he made an additional request for information on January 2, 1997 for a complete copy of his personnel file. Because you have not asked this office for a decision concerning this request, we presume that this information has also been released to the requestor. Gov't Code § 552.301.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The commission received the request for information on January 3, 1997. You did not seek a decision from this office until January 14, 1997. Consequently, you have not met your statutory burden. Gov't Code 552.301. Thus, we will examine whether you have made a compelling demonstration to overcome the presumption of openness.

You assert that the internal investigation materials are confidential by law. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You argue that the requested investigation files are confidential pursuant to section 402.092 of the Texas Labor Code. Section 402.092 provides:

(a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the commission;
- (3) on a judicial determination of good cause; or

(4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

....

(d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

This statute makes confidential the commission's investigation files concerning compliance with Texas workers' compensation laws. However, the commission's own investigations of internal personnel matters is not an investigation into worker's compensation laws. See Open Records Letter Nos. 96-1125 (1996), 96-805 (1996), 95-1508 (1995). Thus, section 402.092 does not make these internal records confidential.

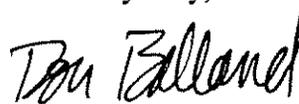
You also contend that the requested information is protected by a right of privacy. Section 552.101 also encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. You cite *Morales v. Ellen* as support for your position. *Morales v.*

*Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In *Ellen* the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. After reviewing that requested materials here, we do not believe that their release would implicate the holding in *Ellen* or violate a right of privacy. See *Industrial Found.*, 540 S.W.2d 668 (common-law privacy); Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)) (constitutional privacy).

The requested information is therefore presumed public.<sup>1</sup> In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). See also Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 104738

Enclosures: Submitted documents

cc: Mr. Keith D. Newmeyer  
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(w/o enclosures)

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<sup>1</sup>Generally, neither section 552.108 nor section 552.111 provide compelling demonstrations to overcome the presumption of openness. See Open Records Decision Nos. 586 (1990), 473 (1987).

