



September 19, 2000

Mr. Craig H. Smith
Deputy General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR2000-3602

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139750.

The Texas Workers' Compensation Commission (the "commission") received a request for a specified investigation file, and a subsequent request for notification of the results of the subject investigation. Your comments raise section 552.101 of the Government Code in conjunction with provisions of the Labor Code, as well as sections 552.108 and 552.111 of the Government Code. You have provided the responsive information to this office for review.

We first note that you have not provided this office with a copy of the request for information which you indicate you received on July 17, 2000. The Public Information Act requires a governmental body that wishes to withhold requested information to provide to this office a copy of the request for information not later than the fifteenth business day after the date of receiving the requestor's written request. Gov't Code § 552.301(e)(1)(B). If the governmental body does not comply with the requirements of section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. Such a compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). The information responsive to the July 17, 2000 request is therefore presumed to be subject to required public disclosure. However, as your argument that the requested information is made confidential by statute provides a compelling reason for withholding the information, that argument will be addressed.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information deemed confidential by other statutes. Section 402.092 of the Labor Code 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.

(b) Commission investigation files are not open records for purposes of chapter 552, Government Code.

Investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law. Labor Code § 402.092(d).

You relate that the responsive information consists of an investigation file maintained by the Division of Compliance and Practices (the "division"). Pursuant to chapter 414 of the Labor Code, the division monitors the conduct of persons subject to the Texas Workers' Compensation Act for compliance with statutes and rules relating to workers' compensation. You state that the requested information concerns the possible violation of the Texas Labor Code, the Texas Workers' Compensation Act and the Commission's rules implementing the Texas Workers' Compensation Act. Based on your assertions and our review of the submitted information we conclude that this investigation file is confidential under Labor Code section 402.092 and that none of the release provisions of that statute apply here. Therefore, the commission must withhold the investigation file from disclosure pursuant to Government Code section 552.101. As this discussion disposes of this request, your additional arguments against disclosure will not be addressed.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 139750

Encl Submitted documents

cc: Ms. Pamella A. Hooper
Jordan & Carmona, P.C.
1801 South Mopac Expressway, Suite 220
Austin, Texas 78746-7576
(w/o enclosures)