



October 31, 2000

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

OR2000-4233

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# 140735.

The Texas Workers' Compensation Commission (the "commission") received a request for "[a]ppointment calendars, date books, or other documents kept by, on behalf, or with respect to any of the six Commissioners for the past twelve months."¹ You claim that none of the requested information is subject to the Public Information Act (the "Act"). Alternatively, you claim that portions of the requested calendars are not subject to the Act and that the remaining portions are excepted from disclosure under sections 552.101, 552.102, 552.104, and 552.110 of the Government Code.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information subject to the Act as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Information is generally "public information" within the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties, even though it may be handwritten or in the possession of one person. Open Records Decision No. 635 at 4 (1995). A public official's or employee's appointment calendar, including personal entries, may be subject to the Act. *Id.* Although not an exhaustive list, the following factors are relevant to determining

¹ Although the request for information sought additional categories of information, you state that the commission has released all responsive documents to the requestor except for those documents responsive to the request item described above.

whether documents are essentially personal in nature: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the employer required its preparation; and whether its existence was necessary to or in furtherance of the employer's business. *Id.* at 5 (citing *In re Grand Jury Proceedings*, 55 F.3d 1012, 1014 (5th Cir. 1995)). We have also held that the ratio of personal to work-related entries is relevant to the nature of the document: "As a general rule, the greater proportion of personal entries, the more likely it is that the trier of fact could reasonably conclude that it was prepared, used, and maintained as a personal document." ORD 635 at 5 n.5 (quoting *In re Grand Jury Proceedings*, 55 F.3d at 1014). Further, if information maintained on a privately owned medium were actually used in connection with the transaction of official business, such as recording the substance of work-related appointments after they have taken place, then the information would be subject to the Act. ORD 635 at 8.

While you raise arguments concerning many of these factors in regard to each requested calendar, we first address your claim that none of the six calendars at issue has been or will be in the possession or control of the commission. You further state that the commission has no right of access to the calendars. We note that in the context of calendars and appointment books, whether a governmental body possesses the information is not dispositive. As this office has held,

Information does not fall outside of the act simply because an individual commissioner, rather than the commission as a whole, possesses it. Records that clearly relate to official business are public records subject to the act regardless of whether an individual member of a governmental body, the governmental body's administrative offices, or the custodian of records holds the records. Open Records Decision No. 425 (1985) at 2 (overruled on other grounds by Open Records Decision No. 439 (1986)). If a governmental body could withhold records relating to official business simply because they are held by an individual member of the governmental body, it could easily and with impunity circumvent the act merely by placing all records relating to official business in the custody of an individual member. The legislature could not have intended to permit governmental bodies to escape the requirements of the act so easily. *Id.*

Accordingly, while we will consider your argument that the commission does not possess the requested calendars, we must look to your other arguments as well.

You explain that the six commissioners only serve the commission part-time and they receive no salaries. Consequently, each commissioner has a separate commercial job or business. The calendars in question are kept by the commissioners mainly for personal use or use in regard to their commercial jobs and businesses. You explain further that none of the calendars has been paid for or maintained with state resources. You state that the calendars

contain only a minuscule portion of commission-related entries. Finally, you explain that none of the calendars has been used in connection with the transaction of official commission or workers'-compensation-related business, nor do the calendars "contain any information of substance, e.g. what occurred at a Commission-related or other workers'-compensation-related appointment or event." Based on these representations, we find that the requested calendars are not subject to the Act. Consequently, the commission has no obligation under the Act to release the calendars.

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).

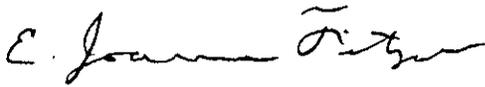
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\er

Ref: ID# 140735

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