



November 15, 2000

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

OR2000-4416

Dear Mr. McGuffey:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141604.

The Texas Workers' Compensation Commission (the "commission") received a request for "[a]ll available records regarding Mr. Bobby Vetkoetter and the status of the Administrative Fraud Division Investigation[.]" You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected 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 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. Thus, we agree that the investigation file is confidential under section 402.092. Therefore, the Commission must withhold the investigation file from disclosure pursuant to section 552.101.¹

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

¹In light of our conclusion under section 552.101, we need not address the applicability of sections 552.108 and 552.111.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/er

Ref: ID# 141604

Encl: Submitted documents

cc: Ms. Karyl Kuuttilla
Workers' Compensation Administrator
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(w/o enclosures)