



January 5, 2001

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

OR2001-0035

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# 142929.

The Texas Workers' Compensation Commission (the "commission") received a request for "the results" of a specified investigation. You explain that the information responsive to the request is contained in documents that are part of the commission's investigation file, and that this office has made a previous determination with respect to this precise information. *See* Open Records Letter No. 2000-3602 (2000) (copy enclosed) (concluding the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code). In response to the requestor's contention that a release provision applies in this instance, you reassert that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

In Open Records Letter No. 2000-3602 (2000), this office concluded that the precise information at issue is made confidential by section 402.092(a) of the Labor Code, and that because none of the release provisions of section 402.092 apply, the information must be withheld pursuant to section 552.101 of the Government Code. The present requestor contends that the results of the investigation are subject to release to her, pursuant to section 402.092(f) of the Labor Code. Section 402.092(f) states:

Upon completion of an investigation where the commission determines a complaint is groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage the commission shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

We understand that the requestor in this instance is an attorney representing "the person who was the subject of the complaint." However, by its express language, the above release provision is contingent upon a determination *by the commission* that the complaint is "groundless, frivolous, made in bad faith, or is not supported by evidence or is done specifically for competitive or economic advantage." You represent to this office that the responsive information demonstrates "that none of [the] conditional and exceptional findings [of section 402.092(f)] has been made" by the commission in the specified investigation. We accordingly agree that section 402.092(f) does not apply in this instance. As provided in Open Records Letter No. 2000-3602 (2000), the information is excepted from disclosure under section 552.101 of the Government Code and must not be released.

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).

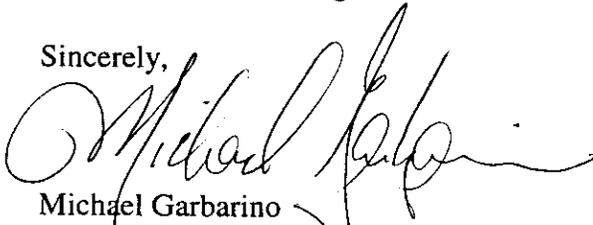
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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 Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID#142929

Encl. Submitted documents

cc: Ms. Pamella Hopper  
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(w/o enclosures)