



January 16, 2001

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

OR2001-0140

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# 143212.

The Texas Workers' Compensation Commission (the "commission") received a written request for Violation Tracking File No. 57311. You contend that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code.

In Open Records Letter No. 2000-2497 (2000), we concluded that the requested information is confidential under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. Section 402.092 provides that information maintained in the commission's investigation files is confidential and may not be disclosed except, among other things, in a hearing conducted by the commission. *See* § 402.092(a)(2). The requestor renews her request for the information and asserts that the information may be disclosed under section 402.092(a)(2) because a benefit review conference is scheduled for November 3, 2000. The requestor argues that a benefit review conference is a hearing under section 402.092(a)(2). In a subsequent letter to this office, dated November 28, 2000, the requestor informs us that "at this time, there is no pending hearing. After the request was made from the . . . Commission, the Commission cancelled the Benefit Review Conference that had been scheduled for November 3, 2000." Because section 402.092(a)(2) is no longer at issue in the present request and there is no change in circumstances since the issuance of Open Records Letter No. 2000-2497, the commission must withhold the requested information in accordance with the prior ruling.

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,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" and last name "Le" clearly distinguishable.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/er

Ref.: ID# 143212

Encl.: Submitted documents

cc: Ms. Jessica M. Warren
Harris & Harris
P.O. Box 162443
Austin, Texas 78716-2443
(w/ enclosures)