OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

January 25, 2001

Mr. Craig Smith
Deputy General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

OR2001-0298

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# 143561.

The Texas Workers' Compensation Commission (the "TWCC") received a request for information related to a specified memorandum. You claim that the requested information is excepted from disclosure by sections 552.108 and 552.111 of the Government Code and that it is exempted from the disclosure requirements of chapter 552 of the Government Code by section 402.092 of the Labor Code. We have considered the argument you raise and have 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. In relevant part, 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
> (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.
>
> . . .

> (d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

TWCC investigates the conduct of persons subject to the Texas Workers' Compensation Act for compliance with statutes and rules relating to workers' compensation. Labor Code § 414.005. You relate that the responsive information consists of an investigation file maintained by the Division of Compliance and Practices in respect to an investigation of a possible violation of section 415.008 of the Labor Code. We note that none of the exceptions to confidentiality appear to apply to this information. Based on your representations and our review of the submitted materials, we conclude that this information is made confidential by section 402.092(a) of the Labor Code, and must therefore be withheld under section 552.101 of the Government Code.

As the above discussion resolves this request we do not address your arguments raised under other sections of the Government Code. 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).

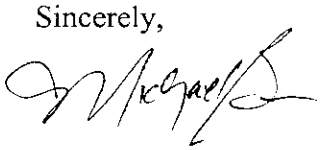
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

MJB/er

Ref: ID# 143561

Encl: Submitted documents

cc: Mr. J. Aubry Davis
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5707 I.H. 10 West, Suite 204
San Antonio, Texas 78201
(w/o enclosures)