



June 28, 2001

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

OR2001-2794

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 # 148922.

The Texas Workers Compensation Commission ("TWCC") received a request for:

[A]ll resources used by [TWCC] Medical Dispute Resolution officers and Hearing officers to assist the officers in compiling their medical necessity of health care [sic], including but not limited to all templates, boilerplates, macros, programs, formats, protocols, and algorithms relating thereto . . . whether in writing or stored by electronic means.

[A]ll memoranda, compilations, documents, materials and other records regarding the funding, development, storage, sharing, disbursement, use and training in the use of such resources whether in writing or stored by electronic means.

You have submitted materials that TWCC deems to be responsive to this request. You assert that the submitted materials do not constitute "information" for purposes of chapter 552 of the Government Code. Alternatively, you claim that these materials are excepted from disclosure under section 552.111 of the Government Code. You state that TWCC will provide the requestor with all other responsive information. We have considered your arguments and have reviewed the materials you submitted.<sup>1</sup>

---

<sup>1</sup>The submitted materials include documents and a computer disc. You indicate that the documents and the disc contain the same information.

In Open Records Decision No. 581 (1990), this office determined that certain computer-related information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information that is made public under section 552.021 of the Government Code. *Id.* at 6. You inform this office that the submitted documents relate to a computer template/program that is being developed for use by TWCC Medical Dispute Resolution Officers in the decisional process. You assert that these documents "are merely computer-related information tools used to manipulate data." Having considered TWCC's position and carefully reviewed the submitted documents, we agree that some of these documents do not constitute public information under section 552.002 of the Government Code and therefore are not subject to public disclosure under section 552.021. We have marked the submitted documents that are not subject to release under section 552.021.

With respect to the rest of the submitted documents, we address your claim under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). We determined that section 552.111 excepts only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

You represent to this office that the submitted documents include draft forms of the Medical Dispute Resolution template/program. You assert that these draft forms and related documents "are the result of, and reflect, internal deliberations within TWCC of the processes and other factors that must be considered in arriving at a Dispute Resolution Decision." In Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the advice, opinion, and recommendation of the drafter with regard to the form and content of the final document, so as to be excepted from disclosure under the statutory predecessor to section 552.111. *See id.* at 2. Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2. Having considered your representations and reviewed the documents at issue, we conclude that section 552.111

excepts from disclosure the drafts of form documents, the final versions of which will be released to members of the public. We further find, however, that the remaining documents do not reveal advice, opinions, or recommendations relating to TWCC policy and thus may not be withheld under section 552.111.

Lastly, we note that some of the submitted documents appear to contain information that is confidential under section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA").<sup>2</sup> The MPA is codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(b), (c). The MPA also includes provisions that govern the disclosure of information that it encompasses. *See id.* §§ 159.003, .004, .005, .006. This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code.<sup>3</sup> We have marked the documents that we believe are governed by the MPA. You may release those documents only if the MPA permits TWCC to do so.

In summary, some of the submitted documents are not subject to public disclosure under section 552.021 of the Government Code. We have marked those documents accordingly. The remaining information includes draft documents that TWCC may withhold under section 552.111 of the Government Code and documents that come within the scope of the Medical Practice Act. We also have marked those documents. The rest of the submitted information must 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.

---

<sup>2</sup>Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

<sup>3</sup>*See* Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon's Texas Civil Statutes, in enacting the Occupations Code. *See* Act of May 13, 1999, 76<sup>th</sup> Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. The legislation was a non-substantive codification.

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).

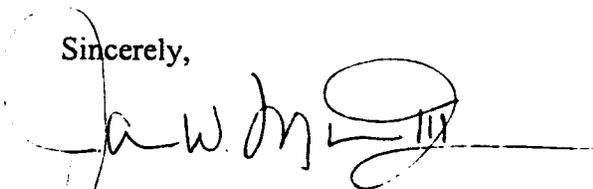
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 148922

Enc. Marked documents and submitted computer disc

c: Mr. Clem C. Martin, D.C.  
North Texas Spine Care, Inc.  
P.O. Box 683  
Bonham, Texas 75418-0683  
(w/o enclosures)