



August 24, 2001

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

OR2001-3760

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# 151119.

The Texas Workers' Compensation Commission (the "commission") received a request for "[c]opies of any and all complaints, reports of any investigation, or any other type of report or activity relating or pertaining to" a named individual. You state that certain responsive information will be provided to the requestor, but assert that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.108 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(a) of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances: (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. None of those circumstances appear to apply here. Further, section 402.092(b) provides that the "[c]ommission investigation files are not open records for purposes of Chapter 552, Government Code." "Investigative file" is defined as

“any information compiled or maintained by the commission with respect to a commission investigation authorized by law.” *Id.* § 402.092(d).

You inform us that the information at issue concerns possible violations of the Labor Code and the Texas Workers' Compensation Act (the “Act”), as well as commission rules implementing the Act. You state that the commission maintains investigation files pursuant to section 414.002 of the Labor Code, which authorizes the commission to maintain a division of compliance and practices and requires that division to conduct investigations relating to alleged violations of the Act and commission administrative rules. *See* Labor Code §§ 414.001, .002. You indicate that the information at issue is contained in such investigation files, and is confidential under section 402.092. You further inform us that the commission has not made any findings relevant to section 402.092, subsections (e) and (f) of the Labor Code,¹ that would affect the disclosure status of the investigation file at issue.

Based upon our review and your representations, we conclude that the material you submitted as responsive to the request consists of investigative material that is subject to section 402.092. Accordingly, the commission must withhold this information and may release it only in accordance with section 402.092(a). A release in response to the present request would not constitute a disclosure under one of the four permissible circumstances enumerated in section 402.092(a) of the Labor Code. Therefore, the submitted information is confidential pursuant to section 402.092 and must be withheld under section 552.101 of the Government Code. *See also* Gov't Code § 552.352

As we resolve your request under section 552.101 in conjunction with the 402.092 of the Labor Code, we need not address your claim under section 552.108.

¹These subsections provide:

(e) The commission, upon request, shall disclose the identity of a complainant under this section if the commission finds:

- (1) the complaint was groundless or made in bad faith; or
- (2) the complaint lacks any basis in fact or evidence; or
- (3) the complaint is frivolous; or
- (4) the complaint is done specifically for competitive or economic advantage.

(f) 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.

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).

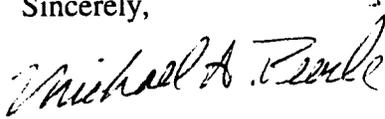
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 151119

Enc. Submitted documents

c: Ms. Teresa Demetriou
Mithoff & Jacks, L.L.P.
One Allen Center, Penthouse
500 Dallas
Houston, Texas 77002
(w/o enclosures)