OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 29, 2003

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

OR2003-0610

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# 175753.

The Texas Workers' Compensation Commission (the "commission") received a request for the investigation file regarding the commission's investigation of a complaint against a named insurance company. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception 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, such as section 402.092 of the Labor Code. Section 402.092 provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances, none of which apply here. Labor Code § 402.092(a). "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). Section 414.005 of the Labor Code provides that the commission's Compliance and Practices Division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers' Compensation Act (the "Act") and commission administrative rules. *See* Labor Code § 414.005; *see also id.* §§ 414.001, .002.

You inform us that the submitted information concerns possible violations of 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 submitted information is contained in such an investigation file, and is confidential under section 402.092. You do not indicate that the commission has 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 on our review of the submitted information and your representations, we conclude that the submitted information consists of investigative material that is subject to section 402.092. 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. Thus, the submitted information must be withheld under section 552.101. As we are able to make this determination, we need not address your remaining arguments against disclosure.

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[1]These 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 175753

Enc. Submitted documents

c: Mr. James Lenardson
11146 Bayside Drive
Frankston, Texas 75763
(w/o enclosures)