



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 24, 2003

Ms. Shannon G. Marty
Assistant General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

OR2003-6710

Dear Ms. Marty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188161.

The Texas Workers' Compensation Commission (the "commission") received a request for information relating to the transfer of six medical dispute resolution positions to the commission's Austin central office, including an internal audit, an internal departmental review, and the notes of six named employees of the commission regarding the audit and the review. You inform us that the commission will release an internal audit report and two internal departmental review reports that are responsive to this request. You claim, however, that other responsive information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.116 of the Government Code provides as follows:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

¹You state that none of the six commission employees identified by the requestor has any handwritten notes relating to the audit or the departmental review that were not generated during and as part of the audit. We note that chapter 552 of the Government Code does not require the commission to release information that did not exist when it received this request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You inform us that the submitted information was prepared and is maintained in connection with audits performed by the commission's Internal Audit Division. You indicate that the commission performed these audits under the authority of sections 2102.005 and 2102.007 of the Texas Internal Auditing Act, chapter 2102 of the Government Code, and the commission's Internal Audit Charter. Based on your representations and our review of the information at issue, we conclude that this information consists of audit working papers, for the purposes of section 552.116(b)(2), and is therefore excepted from disclosure under section 552.116 of the Government Code. As we are able to make this determination, we need not address section 552.101.

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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 188161

Enc: Submitted documents

c: Ms. Denise Terry
138 County Road 127
Marlin, Texas 76661
(w/o enclosures)