



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 6, 2004

Ms. Barbara H. Owens
Assistant General Counsel
Legal Services
Texas Workers' Compensation Commission
4000 South IH-35, MS-4D
Austin, Texas 78704

OR2004-0080

Dear Ms. Owens:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193726.

The Texas Workers' Compensation Commission (the "commission") received a request for information on which it relied in preparing an ambulatory surgical center fee guideline rule or preamble and ASC bills submitted to the commission during a specified time interval. You inform us that the commission is releasing some of the requested information. You contend, based on section 552.027 of the Government Code, that the commission is not required to permit inspection or provide copies of the rest of the information that is responsive to this request.¹ We have considered your arguments and have reviewed the information you submitted.²

Section 552.027 of the Government Code provides in part:

¹Initially, you also raised sections 552.107 and 552.111, but have abandoned your claims under those sections.

²This letter ruling assumes that the submitted documents are a representative sample of the rest of the requested information. This ruling neither reaches nor authorizes the commission to withhold any information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

...

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027(a), (c). Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by a governmental body, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Therefore, section 552.027 provides exemptions from the definition of "public information" under section 552.002 of the Government Code for commercially available research material.

You inform us that the remaining responsive information consists of reports of the Workers' Compensation Research Institute ("WCRI") that were relied on by the commission for developing a proposed ambulatory surgical center fee guideline rule and accompanying proposal preamble. You state that these reports are commercially available. You contend that the commission is therefore not required to permit inspection or provide copies of these publications. You do not indicate, however, whether the information contained in these publications is made part of, incorporated into, or referred to in a commission rule or policy. *See* Gov't Code § 552.027(c). Consequently, we are unable to conclude that section 552.027 completely excuses the commission from permitting the inspection or copying of the information at issue. Instead, we will rule in the alternative. Thus, if the information in the responsive WCRI publications is not made part of, incorporated into, or referred to in the proposed commission rule, then we agree that the commission is not required to permit inspection of the information. *See id.* § 552.027(a). But the commission must allow inspection of the information in question under section 552.027(c) if and insofar as it is made part of, incorporated into, or referred to in the proposed rule. In any event, section 552.027 does not require the commission to provide copies of this information.³

³In this same regard, we note that the WCRI publications appear to be protected by copyright. An officer for public information must comply with the copyright law and is not required to furnish copies of copyrighted information. *See* Attorney General Opinion JM-672 (1987). If a member of the public wishes to make copies of copyrighted materials, he or she must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

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).

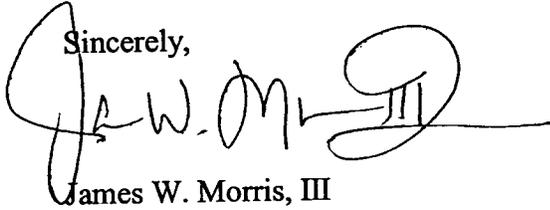
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "J.W. Morris, III". The signature is stylized with a large initial "J" and a prominent "III" at the end.

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

JWM/sdk

Ref: ID# 193726

Enc: Submitted documents

c: Mr. Richard Evans
Governmental Affairs
Texas Association of Business
1209 Nueces
Austin, Texas 78701
(w/o enclosures)