



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2004

Ms. Jennifer McClure
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2004-5867

Dear Ms. McClure:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205284.

Dallas County (the "county") received a request for a specified workers' compensation program report entitled "Dallas County Human Resources/Civil Service Workers' Compensation Program Overview" (the "report"). You contend that names of employees contained in the attachments to the report are excepted from disclosure under section 552.101 of the Government Code. You also contend that a portion of the report is excepted from disclosure under section 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information at issue is a completed report made for or by the county. Therefore, as prescribed by section 552.022, the county must release the

submitted information unless it is confidential under other law. Section 552.111 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See* Open Records Decision No. 473 (1987) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the county may not withhold any portion of the information at issue pursuant to section 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You contend that the names of employees contained in the attachments to the submitted report are confidential under section 402.090 of the Labor Code. Section 402.090 pertains to compilations of statistical information regarding workers' compensation claims and provides:

The [Texas Workers' Compensation Commission], the [Texas Workers' Compensation Research Center], or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

Labor Code § 402.090. The report at issue consists of statistical information regarding workers' compensation claims prepared by the county. Based on your representations and our review, we find that section 402.090 is applicable to the report. We therefore agree that the county must withhold the names of employees contained in the report pursuant to section 552.101 in conjunction with section 402.090 of the Labor Code. *See* Open Records Decision No. 619 (1993) (section 402.090 protects identities of employee claimants).

In summary, the county must withhold the names of employees contained in the submitted report pursuant to section 552.101 of the Government Code in conjunction with section 402.090 of the Labor Code. The remainder of the submitted information must be released to the requestor.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 205284

Enc: Submitted documents

c: Mr. Dave Michaels
Dallas Morning News
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(w/o enclosures)