



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2004

Mr. Walter Ehresman
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100
Austin, Texas 78744-1609

OR2004-7235

Dear Mr. Ehresman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207695.

The Texas Workers' Compensation Commission (the "commission") received a request for certain information pertaining to incidents of illness and injuries concerning a named employer for a specified period of time. The requestor also seeks information pertaining to a specified commission "7 Supplemental form." You state that the commission is making some of the requested information available to the requestor. You also state that some of the requested information does not exist.¹ You claim that some of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. Section 411.034 of the Texas Labor Code provides in pertinent part:

- (a) The identity of an employee in a report filed under Section 411.032 is confidential and may not be disclosed as part of the job safety information system.
- (b) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this section to a person not authorized to receive the information.
- (c) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this section and that the person is not authorized to receive.

Texas Labor Code § 411.034(a) - (c). Section 411.032(a) provides:

- (a) an employer shall file with the commission a report of each:
 - (1) on-the-job injury that results in the employee's absence from work for more than one day; and
 - (2) occupational disease of which the employer has knowledge.
- Texas Labor Code § 411.032(a).

You state that the submitted information was collected by the commission pursuant to section 411.032 of the Labor Code. Based on our review of your arguments and the submitted information, we find that the identifying information of one of the employees contained within the information is confidential under section 411.034. Accordingly, we conclude that the commission must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 411.034 of the Labor Code. *See* Open Records Decision No. 619 (1993) at 4-5. However, we also find in this instance that the requestor, as an attorney representing the other employee who is identified in the submitted information, has a special right of access to that employee's identifying information. *See* Gov't Code § 552.023 (providing that person, or person's authorized representative, has limited special right of access to information when only basis for excepting information involves protection of same individual's privacy interest); *see also* Lab. Code § 411.034(b), (c); Open Records Decision No. 619 (1993) at 4-8 (finding legislative history of statutory predecessor to section 411.034 to reveal that purpose of law was to restrict release of claimants' names to prevent pooling of names for black listing purposes by employers). Accordingly, we also conclude in this instance that the commission

may not withhold this particular employee's identifying information contained within the submitted information under section 552.101 of the Government Code in conjunction with section 411.034 of the Labor Code.²

In summary, the commission must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 411.034 of the Labor Code. The commission must release the remaining submitted information 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 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).

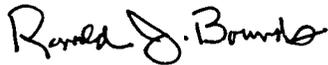
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

² We note that although the requestor has a special limited right of access to this particular information in this instance, the commission should again seek a decision from us before releasing this information to another requestor in response to a request to the commission for such information.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 207695

Enc. Marked document

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(w/o enclosures)