



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 29, 2004

Ms. Michele Austin  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2004-8269

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 209957.

The City of Houston (the "city") received a request for information related to an accident suffered by a named employee of the city. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office not later than the tenth business day after the date of receiving the written request. Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You acknowledge that the city received the request for information on April 20, 2004. As such, the city was required to request a ruling from this office by May 4, 2004 and submit the information required under 552.301(d) by May 11, 2004. You did not seek a ruling or submit any information to this office until July 22, 2004. Based on the foregoing, we conclude that you failed to comply with section 552.301. Because you failed to comply with section 552.301, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Because section 552.101 can provide a compelling reason to overcome this presumption, we will consider its applicability to the submitted information.

You raise section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code for the submitted information. This section pertains to records of the Texas Workers' Compensation Commission (the "TWCC") and provides in part:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

Labor Code § 402.083(a). Section 402.083(a) makes information held in TWCC's claim files confidential. *See* Open Records Decision No. 619 (1993). Section 402.086 of the Labor Code essentially transfers this confidentiality to information that other parties obtain from TWCC files. Section 402.086(a) provides as follows:

- (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

Labor Code § 402.086(a). In Open Records Decision No. 533 (1989), this office determined that the predecessor provision to sections 402.083 and 402.086 protected information received from the Industrial Accident Board (now the TWCC), but did not protect information regarding workers compensation claims that the governmental body did not receive from the TWCC. You inform us that the submitted information was obtained from TWCC claim files. Based on your representation and our review of the information, we agree that it is confidential under sections 402.083 and 402.086 of the Labor Code. Therefore, the submitted information must be withheld under section 552.101 of the Government Code.

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).

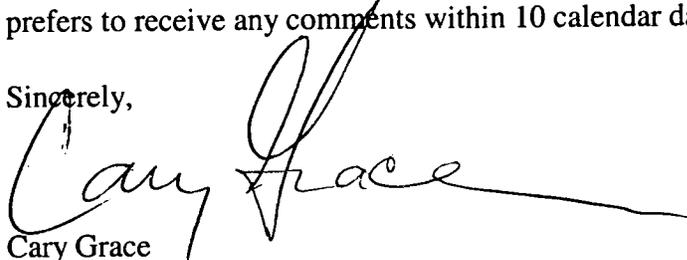
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 209957

Enc. Submitted documents

c: J. E. Langston  
Holliday Door and Gate Systems, Inc.  
5903 Griggs  
Houston, Texas 77023  
(w/o enclosures)