



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 18, 1997

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR97-0556

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104470.

The Texas Workers' Compensation Commission (the "commission") received two requests for 13 categories of information relating to the requestor and two other hearings officers. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.111, and 552.117 of the Government Code. You also claim that some of the individual categories are overbroad. You have submitted samples of the requested information.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first address your contention that some of the requested categories are overbroad. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.



entity. Open Records Decision Nos. 555 (1990), 551 (1990). Here, we cannot conclude that litigation is reasonably anticipated for purposes of chapter 552 of the Government Code. Therefore, the commission may not withhold the requested information under section 552.103.

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). Here, all the employees have requested that this information be withheld from public disclosure. Therefore, the commission must withhold the information protected by section 552.117, with the exception of the information relating to the requestor.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section excepts from disclosure information protected by common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.101 also excepts information that is confidential under constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope

of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy.³

Section 552.101 also encompasses information protected by other statutes. Section 402.083(a) of the Labor Code provides:

(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). In Open Records Decision No. 619 (1993), this office concluded that this section protects only information in or derived from a claim file that explicitly or implicitly discloses the identity of the employee filing a workers' compensation claim. We therefore conclude that section 402.083(a) of the Labor Code makes some of the information responsive to request numbers 5, 6, 7, 8, 9, 10, and 12⁴ confidential. We have marked the information that must be withheld under section 402.083(a) as applied through section 552.101 of the Government Code.

³We note that if any information collected under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the "ADA"), from an applicant or employee concerning that individual's medical condition and medical history appears in anyone but the requestor's personnel files, that information is confidential under section 552.101 of the Government Code, in conjunction with provisions of the ADA. Open Records Decision No. 641 (1996). This type of information must be collected and maintained separate from other information and may be released only as provided by the ADA. The information that was submitted to this office as responsive to request number 13 does not appear to contain any information collected under the ADA and may not be withheld under the ADA provisions as applied through section 552.101 of the Government Code.

⁴This is request 12 in the first request.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. We conclude that the information here relates to a routine personnel matter. Therefore, the commission may not withhold any of the requested information under section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Ref.: ID# 104470

Enclosures: Marked documents

cc: Mr. Robert Márquez
(w/o enclosures)

