



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 24, 1997

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

OR97-2574

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# 111238.

The Texas Workers' Compensation Commission (the "commission"), received a request for a copy of the "final decision letter/memo" regarding a particular employee grievance. You contend that the memorandum is excepted from disclosure pursuant to sections 552.101, 552.102, 552.103, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

The commission previously received a request for other documents relating to the employee grievance. You invoked sections 552.103 and 552.111 of the Government Code for those documents also. In Open Records Letter No. 97-2444 (1997), we ruled that the commission could not withhold the documents at issue from disclosure under either section 552.103 or section 552.111. For the reasons stated in Open Records Letter No. 97-2444 (1997), we conclude that the commission may not withhold the memorandum at issue here from disclosure under either section 552.103 or section 552.111. Section 552.103 is not applicable to the memorandum because you have not demonstrated that the commission reasonably anticipates litigation. Open Records Letter No. 97-2444 (1997). Section 552.111 does not protect the memorandum because it relates to a routine personnel matter, not a policymaking process. Open Records Letter No. 97-2444 (1997). For your reference, we have enclosed a copy of Open Records Letter No. 97-2444 (1997).

We now consider your additional arguments that the memorandum is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional,

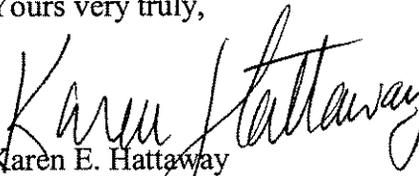
statutory, or by judicial decision.” Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release 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. The court considered intimate and embarrassing information such as that 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.

Having reviewed the memorandum, we find that it does not contain highly intimate and embarrassing information and, therefore, does not meet the first prong of the *Industrial Foundation* test. Furthermore, the public has a legitimate interest in the job performance of public employees, a subject with which this memorandum deals. See Open Records Decision Nos. 473 (1987), 470 (1987). Accordingly we conclude that sections 552.101 and 552.102 do not except the memorandum from disclosure. The commission must release the memorandum to the requestor.

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 upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 111238

Enclosures: Submitted documents, Open Records Letter No. 97-2444 (1997)

cc: Mr. Calvin H. Shannon
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(w/o - Submitted documents; w/ - Open Records Letter No. 97-2444 (1997))