



December 14, 1999

Ms. Mary Barrow Nichols  
General Counsel  
Texas Workers' Compensation Insurance Fund  
221 West 6<sup>th</sup> Street, Suite 300  
Austin, Texas 78701-3403

OR99-3634

Dear Ms. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130350.

The Texas Workers' Compensation Insurance Fund (the "Fund") received a request for a copy of the video shot by a private investigator hired by the Fund's Special Investigation Department to investigate the requestor's claim. The requestor also seeks the name and license number of the private investigator. You state that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information made confidential by specific statutes. You assert, among other things, that the requested information is made confidential by article 5.76-3, section 11A of the Insurance Code. Subsection (a) of section 11A provides that "[i]nformation maintained in the investigation files of the fund is confidential and may not be disclosed . . ." except in four limited circumstances which are not applicable here. Subsection (b) of section 11A further provides that "Fund investigation files are not open records for purposes of the open records law, Chapter 552, Government Code." Investigation file is defined to mean "any information compiled or maintained by the fund with respect to a fund investigation authorized by law." Ins. Code art. 5.76-3, § 11A(d). You explain that the requested information was compiled and maintained by the Fund's Special Investigations Division as part of an investigation conducted under article 5.76-3, section 11 of the Insurance Code. Because the requested information appears to fall within the scope of section 11A, you must withhold this information from disclosure pursuant to section 552.101 of the Government Code.

Because we are able to make a determination under article 5.76-3, section 11A of the Insurance Code, we need address you additional arguments against disclosure. 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.

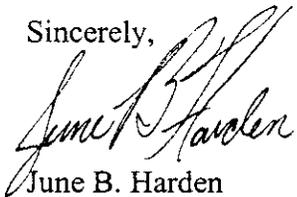
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 130350

Encl. Submitted documents and videotape

cc: Mr. Lloyd Daniel Amerson  
Post Office Box 337  
Gilmer, Texas 75644  
(w/o enclosures)