



April 20, 2000

Mr. Craig H. Smith  
Deputy General Counsel  
Texas Workers' Compensation Commission  
4000 South IH-35  
Austin, Texas 78704-7491

OR2000-1559

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134614.

The Texas Workers' Compensation Commission (the "commission") received a request for the findings of an investigation undertaken in response to the requestor's complaints about fellow employees. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

You assert that the requested information is an investigation file maintained by the Division of Compliance and Practices (the "division"), and that the file is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information deemed confidential by other statutes. Section 402.092 of the Labor Code provides:

(a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except:

(1) in a criminal proceeding;

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<sup>1</sup>We have also reviewed the correspondence sent to this office by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit written comments stating reasons why information should or should not be released). We note that the requestor asserts that this is "not just an open records matter" and asserts that a legal question exists as to whether her civil rights were violated. However, this office can only address the applicability of the exceptions to public disclosure claimed by the commission to the submitted information.

- (2) in a hearing conducted by the commission;
- (3) on a judicial determination of good cause; or
- (4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

....

(d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

Pursuant to chapter 414 of the Labor Code, the division monitors the conduct of persons subject to the Texas Workers' Compensation Act for compliance with statutes and rules relating to workers' compensation. According to section 414.005 of the Labor Code, "the division shall maintain an investigation unit to conduct investigations relating to alleged violations of this subtitle [Texas Workers' Compensation Act] or commission rules . . . ." Labor Code § 414.005. You state that the requested information concerns the possible violation of the Texas Workers' Compensation Act and the commission's rules implementing the Texas Workers' Compensation Act. The submitted information reflects that the investigation included alleged violations of section 402.006 of the Labor Code which prohibits a commission employee from accepting a gift from a person having an interest in a matter before the commission. *See* Labor Code § 402.006.<sup>2</sup>

Generally, the commission's own investigations of internal personnel matters is not an investigation into workers' compensation laws. However, portions of the submitted information includes an investigation of alleged violations of the Texas Workers' Compensation Act. Thus, we agree that the portions of the investigation file pertaining to alleged violations of the Texas Workers' Compensation Act are confidential under section 402.092. Therefore, the commission must withhold portions of the investigation file from disclosure pursuant to section 552.101 in conjunction with section 402.092 of the Labor Code.

However, the submitted information also includes an investigation into allegations that a commission employee falsified documents. You have not provided this office, and we have not found, a provision in the Texas Workers' Compensation Act or a commission rule that pertains to this allegation. Therefore, we conclude that the allegation of falsified documents

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<sup>2</sup>Section 402.006 of the Labor Code is in Subtitle A which is the Texas Workers' Compensation Act. *See* Labor Code § 401.001.

concerns an investigation into personnel matters not contemplated by section 402.092 of the Labor Code. Therefore, we conclude that you may not withhold the marked information from disclosure under section 552.101.

You also assert that the submitted information is excepted from disclosure under section 552.108. You claim that the “information is related to the Commission’s duty to enforce its policies to ensure that the conduct of the persons subject to the Act is in compliance with Commission rules, the Act, and other laws relating to workers’ compensation.” You cite *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668 (Tex. 1995) as authority for your assertion that the information is excepted from public disclosure by section 552.108 of the Government Code. In *A & T Consultants*, the Texas Supreme Court held that the Comptroller could withhold from disclosure audit papers pursuant to section 552.108 to protect the Comptroller’s interest in enforcing the tax laws. *Id.* at 677. We note that, in the present case, the investigation concerning falsified documents was not forwarded for criminal investigation. Thus, we decline to extend *A & T Consultants* to the commission’s interest in policy or civil enforcement. See Open Records Decision Nos. 434 at 2 (1986), 287 at 2 (1981) (whether information falls within section 552.108 must be determined on a case-by-case basis). Therefore, the marked information may not be withheld under section 552.108 of the Government Code.

You next assert that the information is excepted from disclosure under section 552.111 of the Government Code. This section excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity’s policymaking process. *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.–Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is “to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.–San Antonio 1982, writ ref’d n.r.e.) (emphasis added). However, an agency’s policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). As previously noted, portions of the submitted materials concern commission personnel matters. Therefore, we conclude that the commission may not withhold the marked information under section 552.111 of the Government Code. *City of Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan.13, 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455 (Tex. App.–Houston [14th Dist.] 1996, writ denied) (records relating to problems with specific employee do not relate to making of new policy but merely implement existing policy). Accordingly, the commission must release the marked information.

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.

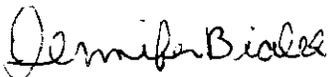
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/ch

Ref: ID# 134614

Encl. Submitted documents

cc: Ms. Janine H. Legg, MAN, ASP  
9597 Jones Road #179  
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(w/o enclosures)