



August 15, 2001

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

OR2001-3589

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# 150704.

The Texas Workers' Compensation Commission (the "commission") received a request for records relating to a specified individual. You state that you will provide responsive information to the requestor. You claim that the submitted 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. We have also considered the comments submitted by the requestor. *See Gov't Code § 552.304* (providing for submission of public comments).

Initially, we address the requestor's contention that the commission did not comply with the requirements of section 552.301(d) of the Government Code. Section 552.301(d) provides as follows:

A governmental body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). In a letter dated June 12, 2001, the commission states that, by copy of the letter, it is notifying the requestor of its request for a decision in accordance with section 552.301(d). The letter dated June 12, 2001 also reflects that the requestor was copied on the letter. The requestor, however, contends that she did not receive the commission's letter dated June 12, 2001 requesting a decision from this office and was not informed of the commission's request for a decision until a subsequent letter dated June 28, 2001 which was later than the tenth business day after the date the commission received the request for information. This office cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. *See* Open Records Decision Nos. 554 (1990), 552 (1990). Based upon the statements of the commission in its June 12, 2001 letter, we conclude that the commission complied with the requirements of section 552.301(d) of the Government Code.

You assert that Attachment B is excepted under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 402.092 provides in relevant part:

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

- (1) in a criminal proceeding;
- (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.

(b) Commission investigation files are not open records for purposes of Chapter 552, Government Code.

...

(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.

Labor Code § 402.092. You explain that the commission maintains investigation files under sections 414.002, 414.005, and 414.007 of the Labor Code, which authorize the maintenance of an investigation unit to conduct investigations relating to alleged violations of the Texas Workers' Compensation Act, subtitle A of title 5 of the Labor Code, and the commission's administrative rules. You indicate that the submitted information represents investigation files that concern the possible violation of the Labor Code, the Workers' Compensation Act, and the commission's rules. You claim that the contents of the submitted files are confidential under section 402.092. Based on your representations and our review of the submitted information, we agree that it constitutes investigation files that are confidential under section 402.092 of the Labor Code. Therefore, the commission must withhold Attachment B from disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup>

You also assert that Attachments C and D are excepted under section 552.111 of the Government Code. Section 552.111 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. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 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); Open Records Decision No. 615 at 5-6 (1993). *But see* Open Records Decision No. 631 (1995) (finding personnel matters of a broader scope were excepted from disclosure under section 552.111). After reviewing the submitted information which pertains to the commission's handling of a specific open records request, we conclude that Attachments C and D relate to internal administrative matters and not to the commission's policymaking functions. *See City of Garland*, 22 S.W.3d at 351. Therefore, the commission may not withhold Attachments C and D under section 552.111 of the Government Code.

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<sup>1</sup> Having found Attachment B to be excepted under section 552.101 in conjunction with section 402.092 of the Labor Code, we need not address your remaining exceptions for Attachment B.

In conclusion, the commission must withhold Attachment B under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. The commission, however, must release Attachments C and D.

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).

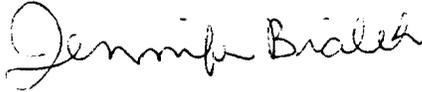
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

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 General Services 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. 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,

A handwritten signature in cursive script that reads "Jennifer Bialek".

Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 150704

Enc: Submitted documents

c: Ms. Laura Lee Stapleton  
Jackson Walker, L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)