



December 20, 2001

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

OR2001-6014

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# 156434.

The Texas Workers' Compensation Commission (the "commission") received a request for five categories of information regarding certain "proposed new rules." You advise us that you will release some of the requested information to the requestor, but that you do not possess information responsive to the fifth category sought. You claim that the highlighted portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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.

Information revealing the date of injury, as well as an injured employee's name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth we believe implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. In cases where release of an employer's identity would reveal the claimant's identity, the identity of the employer must be withheld. After reviewing your arguments and the submitted documents, we conclude that you must withhold most of the highlighted information under section 552.101 in conjunction with section 402.083. We have, however, marked certain information that does not appear on its face to either explicitly or implicitly identify a claimant. Moreover, you have not explained how the release of this information would identify the claimant. Consequently, the marked information may not be withheld under section 552.101 in conjunction with section 402.083.

Section 552.117(1) excepts from disclosure information that relates to the home addresses, home telephone numbers, social security numbers, and family members of employees of a governmental body who request that this information remain confidential under section 552.024. You have submitted documents to us which you claim demonstrate that certain employees elected to keep their information confidential under section 552.024. We note, however, that two of the public information access forms you submitted were signed by employees after the commission received the request for information. This office previously ruled that the character of requested information as public under the statutory predecessor to section 552.117 is determined as of the time the request for information was made. *See* Open Records Decision No. 530 (1989). Accordingly, we have marked the highlighted information that you may not withhold under section 552.117. You must, however, withhold the remaining information highlighted pursuant to that section.

As for social security numbers that are not excepted from disclosure under section 552.117, they may nevertheless be confidential under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the commission pursuant to any provision of law, enacted on or after October 1, 1990.

The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. This new exception makes certain e-mail addresses confidential.¹ Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). Section 552.137 requires the commission to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. As there is no indication that the members of the public consented to release in this instance, the commission must withhold the e-mail addresses in the submitted documents under section 552.137 of the Government Code. We have marked the documents accordingly.

Finally, section 552.130 excepts from disclosure information that relates to a driver's license issued by an agency of this state. Thus, under section 552.130, you must withhold the driver's license numbers you have highlighted. We have marked additional information that must be withheld under section 552.130.

In sum, you must withhold the information you highlighted under sections 552.101 and 552.117, except where we have marked otherwise. Likewise, you must also withhold driver's license information under section 552.130 and the marked e-mail address under section 552.137.

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

¹House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

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).

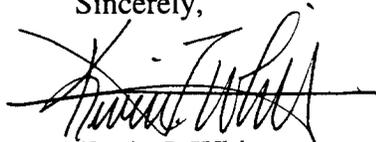
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 156434

Enc. Marked documents

c: Mr. Allen Meril, M.D.
2301 Forest Lane
Garland, Texas 75042
(w/o enclosures)