



March 27, 2002

Ms. Shannon G. Marty
Assistant General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR2002-1516

Dear Ms. Marty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160430.

The Texas Workers' Compensation Commission (the "commission") received a request for information relating to allegations made against the requestor. You contend that the commission is not required to request a decision from this office until it has received a bond from the requestor. In the alternative, you claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing your argument that the commission is not required to request a decision from this office under section 552.301 of the Government Code until the requestor has provided a bond as required by section 552.263(c) of the Government Code. Section 552.301 of the Government Code provides, in part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Section 552.263 provides, in relevant part:

(c) An officer for public information or the officer's agent may require a deposit or bond for payment of unpaid amounts owing to the governmental body in relation to previous requests that the requestor has made under this chapter before preparing a copy of public information in response to a new request if those unpaid amounts exceed \$100. The officer for public information or the officer's agent may not seek payment of those unpaid amounts through any other means.

....

(d) For purposes of Subchapter E, a request for a copy of public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs or unpaid amounts if the governmental body's officer for public information or the officer's agent requires a deposit or bond in accordance with this section.

You indicate that, as of the date the commission received the instant request for information, the requestor owed the commission \$141.69 for previously requested copies. Consequently, you state that, upon receiving the instant request, the commission sent the requestor a certified letter requiring payment of the \$141.69 pursuant to section 552.263(c) of the Government Code. According to you, as of the date of your correspondence with this office, the requestor had not submitted the required payment. You contend that the ten-day deadline for requesting a decision under section 552.301 should not begin until the commission has received the required payment under section 552.263. You admit that section 552.263 does not specifically provide that a governmental body need not comply with section 552.301 until the governmental body receives the deposit or bond. Nevertheless, you argue that the more efficient and cost effective approach in this situation, where the governmental body has requested a deposit or bond and has not yet received it, is to toll the deadlines in section 552.301 of the Government Code.

Section 552.301 is found in subchapter G of chapter 552 of the Government Code. While the legislature expressly indicated that the requirements of subchapter E do not take effect until the governmental body requesting a deposit or bond under section 552.263 receives the deposit or bond, the legislature did not specifically provide for the same result regarding the deadlines found in subchapter G of section 552.301. We find that the legislature's inclusion of a specific provision allowing for the tolling of the requirements in subchapter E coupled with its omission of a specific provision allowing for the tolling of deadlines under subchapter G reveals that the legislature did not intend for the deadlines of subchapter G, and specifically section 552.301, to be tolled until a governmental body receives a deposit or

bond required under section 552.263. See *Maley v. 7111 Southwest Freeway, Inc.*, 843 S.W.2d 229, 231 (Tex. App.--Houston [14th Dist.] 1992, writ denied) (“an express listing of certain persons, things, consequences, or classes is equivalent to an express exclusion of all others”); *Tex. Real Estate Comm’n v. Century 21 Security Realty, Inc.*, 598 S.W.2d 920, 922 (Tex. Civ. App.--El Paso 1980, writ ref’d n.r.e.) (same); *State v. Jones*, 570 S.W.2d 122, 123 (Tex. App.--Austin 1978, no pet.). Consequently, we find that a governmental body is required to request a decision from this office within ten business days of the date it receives a request for information even if the governmental body has not yet received a deposit or bond required of the requestor under section 552.263.

Next, we address your argument that the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). You contend that the submitted documents are excepted from disclosure under the attorney-client privilege in their entirety. Based on your argument and our review of the submitted information, we agree that most of the submitted information consists of attorney advice and opinion as well as confidential client communications. This information may be withheld under section 552.107. The remainder of the information, which we have marked, is not protected under section 552.107 and must be released.

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).

¹You indicate that the commission will release the remaining responsive information not submitted to this office.

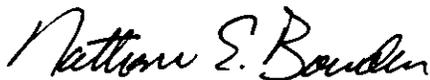
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 160430

Enc: Submitted documents

c: Ms. Leonor Matano
580 Irene Drive
Canyon Lake, Texas 78133
(w/o enclosures)