



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 7, 2003

Mr. Craig H. Smith  
Director of Legal Services  
Texas Workers' Compensation Commission  
4000 South IH-35, MS-4D  
Austin, Texas 78704

OR2003-0124

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# 174615.

The Texas Workers' Compensation Commission (the "TWCC") received a request for six categories of information, including:

- (1) A certified copy of Question Resolution Log 01-03.
- (2) A certified copy of any Question Resolution Logs discussing how to calculate reimbursement under TWCC Rule 134.401.
- (3) Certified and redacted copies of all decisions from the State Office of Administrative Hearings reviewing or discussing how to calculate reimbursement under TWCC Rule 134.401, or involving a fee reimbursement dispute for fees governed by TWCC Rule 134.401.
- (4) Certified and redacted copies of all decisions of the Medical Review Division reviewing or discussing how to calculate reimbursement pursuant to TWCC Rule 134.401, or involving a fee reimbursement dispute for fees governed by TWCC Rule 134.401.
- (5) A certified copy of the preamble to TWCC Rule 134.401.

- (6) Certified copies of any question resolution logs, memorandums, reports, treatises, rules, or documentation of any kind from the TWCC defining "usual and customary" as used in TWCC Rule 134.401.

You state that information responsive to categories 1 through 5 and some information responsive to category 6 will be provided to the requestor. You claim, however, that the remainder of the information responsive to item 6 is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you also contend that the information submitted in Attachments B and C is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; 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). You state that Attachments B and C contain recommendations of TWCC personnel that reflect the internal advice, opinions, and deliberations of TWCC staff on a policymaking matter. Upon review, we agree that most of the submitted information consists of communications among agency staff that consist of advice, opinions, and recommendations reflecting the policymaking processes of the commission. Accordingly, we determine that the commission may withhold the majority of the submitted information from disclosure pursuant to section 552.111 of the Government Code. However, we have marked certain communications that do not consist of advice, opinions, and recommendations reflecting the policymaking processes of the commission. The commission may not withhold the marked portions of the documents under section 552.111.

Next, we address your claim under section 552.107 with respect the portions of the information that we have marked. Section 552.107(1) of the Government Code excepts information that an attorney cannot disclose because of a duty to the attorney's client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) 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. *Id.* at 5. When communications from attorney to client do not reveal the

client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. Upon review, we find that the marked portions of the submitted information consist of confidential communications from TWCC staff to TWCC attorneys seeking legal advice and opinion. Thus, we determine that TWCC may withhold the information we have marked under section 552.107(1) of the Government Code.

In summary, we have marked confidential communications that may be withheld under section 552.107 of the Government Code. The remainder of the submitted information may be withheld under section 552.111 of the Government Code.

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 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 174615

Enc: Submitted documents

c: Mr. H. Douglas Pruett, P.C.  
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(w/o enclosures)