



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2004

Ms. Michele Austin
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2004-1063

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196029.

The City of Houston (the "city") received a request for the files pertaining to the requestor's specified worker's compensation claim. You state that the requestor subsequently modified his request and is now only seeking "the information contained on page 2 in Note Number 649." You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.¹

You claim that the responsive information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 402.083 and 402.086 of the Labor Code.² Section 402.083, which pertains to records of the Texas Workers' Compensation Commission ("TWCC"), provides in part:

¹ We note that based on your representations all other information contained in the submitted information, other than the information pertaining to "Note Number 649" is not responsive to the request for information. Thus, the city need not release any portion of this other information to the requestor in response to this ruling.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(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). Section 402.083(a) makes confidential information in TWCC's claim files. *See* Open Records Decision No. 619 (1993). Section 402.086(a) essentially transfers this confidentiality to information that other parties obtain from TWCC's files. Section 402.086(a) provides:

(a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

Labor Code § 402.086(a). In Open Records Decision No. 533 (1989), this office determined that the predecessor provision to sections 402.083 and 402.086 protected information received from the Industrial Accident Board (now TWCC), but did not protect information regarding workers compensation claims that the governmental body did not receive from TWCC. You state that the information that is responsive to this request is "derived from a claim" regarding an employee. However, after carefully reviewing your arguments and the responsive information, it does not appear that this information was obtained from TWCC. *See* Open Records Decision No. 533 at 4 (1989). We, therefore, do not agree that sections 402.083 and 402.086 of the Labor Code apply in this instance. Accordingly, we conclude that the city may not withhold any portion of the responsive information pursuant to section 552.101 of the Government Code in conjunction with section 402.083 or section 402.086 of the Labor Code. Consequently, the city must release the submitted responsive information to the requestor.

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 Dep't of Pub. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 196029

Enc. Submitted document

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(w/o enclosures)