



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2005

Mr. Walter Ehresman
Assistant General Counsel
Texas Workers' Compensation Commission
7551 Metro Center Drive, Suite 100
Austin, Texas 78744-1609

OR2005-09841

Dear Mr. Ehresman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 235363.

The Texas Workers' Compensation Commission (the "commission") received a request for "any and all documents in the OSHA/OSHCN Program files ... held by the [commission] from January 2000 to the present pertaining to" four different named companies. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. A federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision Nos. 599 at 5 (1992), 476 at 5 (1987). Under section 670 of title 29 of the United States Code, the United States Secretary of Labor is required to conduct certain educational and training programs related to occupational health and safety. The secretary is authorized to enter into cooperative agreements with states to allow employers to consult with the states regarding occupational safety and health requirements and compliance. *See* 29 U.S.C.A. § 670(d)(1). Pursuant to these agreements, the state is required to "provide on-site consultation at the employer's work site to employers who request such assistance." *Id.* § 670(d)(2).

¹We assume that the sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The United States Department of Labor has adopted regulations concerning the requirements of a cooperative agreement between states and OSHA. *See* 29 C.F.R. pt. 1908. Specifically, section 1908.6 of the regulations covers the conduct of a visit by a state consultant to an employer's work site under the OSHA Consultation (OSHCON) program. Among other things, the regulations require the consultant to prepare a written report after each visit discussing, among other things, specific hazards at the work site and possible corrective action. *See id.* §1908.6(g). The regulations further provide that:

[b]ecause the consultant's report contains information considered to be confidential, and because disclosure of such reports would adversely affect the operation of the OSHA consultation program, the state shall not disclose the consultant's written report except to the employer for whom it was prepared and as provided for in section 1908.7(a)(3).

Id. § 1908.6(g)(2). Likewise, these regulations require states to keep confidential "consultation program information which identifies employers who have requested the services of a consultant" because the disclosure of such information "would adversely affect the operation of the OSHA consultation program as well as breach the confidentiality of commercial information not customarily disclosed by the employer." *Id.* § 1908.6(h)(2).

The submitted information includes consultant's reports, as well as other consultation program information, which were prepared by a state consultant under the OSHCON program. Based on our review of your arguments and the submitted information, we conclude that the information is confidential under section 1908.6 of title 29 of the Code of Federal Regulations and, thus, must be withheld from disclosure pursuant to section 552.101 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, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 235363

Enc. Submitted documents

c: Ms. Lisa Soria
Jill Herz, Attorney at Law, P.C.
430 Founders Square
900 Jackson Street
Dallas, Texas 75202
(w/o enclosures)