



February 5, 2002

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

OR2002-0544

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# 158199.

The Texas Workers' Compensation Commission (the "commission") received a request for copies of all records pertaining to a specified company from 1998 to the present regarding the company's practice and procedures for cleaning the company's ready mix cement trucks. You claim that the submitted 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. We note that 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). Pursuant to 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). Under 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).

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. These regulations require the consultant to prepare a written report after each visit discussing 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 an evaluation report, as well as other consultation program information, which was prepared by a state consultant. The evaluation report, as well as the other consultation program information, discusses specific hazards at the work site and possible corrective action that should be taken by the company. Based on our review of your arguments and this 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).

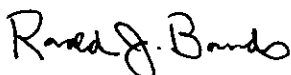
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 158199

Enc. Submitted documents

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(w/o enclosures)