



**THE ATTORNEY GENERAL
OF TEXAS**

August 13, 1987

**JIM MATTOX
ATTORNEY GENERAL**

Mr. William Grossenbacher
Administrator
Texas Employment Commission
T.E.C. Building
Austin, Texas 78778

Open Records Decision No. 476

Re: Whether Open Records Act, article 6252-17a, V.T.C.S., requires Texas Employment Commission to release names of employers or employees who have filed unemployment benefit appeals

Dear Mr. Grossenbacher:

You have asked if the Open Records Act, article 6252-17a, V.T.C.S., requires the Texas Employment Commission to grant a request for

weekly computer reports disclosing the names of all employers or employees who have filed an unemployment benefit appeal in the Houston area.

We answer in the negative.

At the onset, we note that because the Open Records Act does not embrace information not in existence when a request is submitted to a governmental body, Open Records Decision No. 452 (1986), the commission is not obliged to comply with a standing request to provide information on a weekly basis. The requestor, however, is likely to submit periodic requests for this information, and for this reason we shall consider its availability. See Open Records Decision No. 465 (1987) (involving same issue).

In your request letter, you argued that Attorney General Opinions H-626 (1975) and H-404 (1974) authorize the commission to deny this request. You then proposed an alternative rationale for withholding this information. We accept this rationale as dispositive of this request, and we therefore shall not consider the effect of Opinions H-626 and H-404.

Your request letter states:

The Texas Unemployment Compensation Act, and the administration of that act, must conform with certain federal legislation as a prerequisite for

approval to the state of our agency's administrative grant. Our administrative grants in the last fiscal year exceeded \$100 million. In particular, this agency must comply with Title III of the Social Security Act. Section 303 (a)(1) of Title III of the Social Security Act provides as follows:

Sec. 303 (a) The Secretary of Labor shall make no certification for payment to any state unless it finds that the law of such state, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provisions for -- (1) such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. . . .

The Department of Labor (DOL), which has responsibility for determining whether or not an agency is in compliance with federal law, has steadfastly maintained that Section 303 (a)(1) of the Social Security Act necessarily implies a strict need for confidentiality of unemployment claims information. The confidentiality of information is deemed necessary to prevent discouragement from the filing of unemployment claims, as well as to encourage the frank disclosure of information by claimants and employers necessary to the proper adjudication of such claims.

Attached are several documents from our files which convey the DOL viewpoint on this subject. Note particularly the letter marked 'Attachment B,' which states, in pertinent part:

We have consistently held that disclosure of names, addresses, and benefit amounts paid, on an unrestricted basis, is not consistent with Section 303 (a)(1) of the Social Security Act.

Standing alone, the statements in "Attachment B" and in the other documents to which you referred could not be regarded as official departmental interpretations of the Social Security Act for purposes of the rule that interpretations of a law by the agency charged with implementing that law are entitled to weight. See, e.g., Ex parte Roloff, 510 S.W.2d 913 (Tex. 1974). These statements are the remarks

of a single departmental employee, and they lack citations indicating their source. Our research, however, has yielded the administrative regulations that are the likely source of these statements. We believe that these regulations, construed in the light of the statements contained in the documents that you submitted, require the conclusion that federal law deems "confidential" the information at issue here.

These regulations, found at 20 C.F.R. §§603.1 et seq., provide in relevant part:

603.1 Purpose

. . . (b) Section 2651(d) of Pub. L. 93-396 added a new section 303 (f) of the Social Security Act (42 U.S.C. 503(f)), to provide that the agency charged with the administration of the State unemployment compensation law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of Section 1137 of the Social Security Act, as added by Pub. L. 98-369. The regulations in this part are issued to implement this requirement.

603.2 Definitions.

For the purposes of this Part:

. . . .

(c) 'Claim information' means information regarding:

(1) Whether an individual is receiving, has received or has applied for unemployment compensation;

. . . .

(5) Any other information contained in the records of the State unemployment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

. . . .

603.4. Notification to claimants.

Claimants shall be notified at the time of filing an initial claim for benefits through a written statement on or provided with the initial claim form and periodically thereafter that information available through the income and eligibility verification system will be requested and utilized by requesting agencies as defined in §603.2(d) (section 1137(a)(6)). . . .

603.5 Disclosure of information.

The State unemployment compensation agency will disclose to authorized requesting agencies, as defined in §603.2(d), which have entered into an agreement in accordance with this part, wage and claim information as defined herein contained in the records of such State agency as is deemed by the requesting agency to be needed in verifying eligibility for, and the amount of, benefits. . . .

603.6 Agreement between State unemployment compensation agency and requesting agency.

(a) The State unemployment compensation agency will enter into specific written agreements with any requesting agency as defined in this part.

(b) The agreements will include, but need not be limited, to the following:

. . . .

(6) Safeguards to ensure that information obtained from the State unemployment compensation agency will be protected against unauthorized access or disclosure. At a minimum, such procedures will comply with the requirements of §603.7.

. . . .

603.7 Protection of confidentiality.

(a) State unemployment compensation agencies shall require requesting agencies receiving information under this part to comply with the following

measures to protect the confidentiality of the information against unauthorized access or disclosure:

[six measures are listed]

(b) Any requesting agency is authorized to redisclose the information only as follows:

[three circumstances are listed]

(c) The requesting agency shall permit the State unemployment compensation agency to make onsite inspections to ensure that the requirements of State unemployment compensation laws and Federal statutes and regulations are being met (section 1137(a)(5)(B)). (Emphasis added).

These regulations send a clear message: "claim information" in the files of a state unemployment compensation agency -- in this case, the Texas Employment Commission -- is to be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. Otherwise, that information is subject to elaborate procedures designed to protect it against unauthorized access or disclosure. The names of employers and employees who file appeals in unemployment compensation cases undoubtedly are within the definition of "claim information" set forth in the regulations, because their disclosure may well reveal that the employee involved in the appeal "is receiving, has received, or has applied for unemployment compensation." 20 C.F.R. §603.2(c)(1). Accordingly, the federal regulations prohibit the commission from disclosing these names to this requestor.

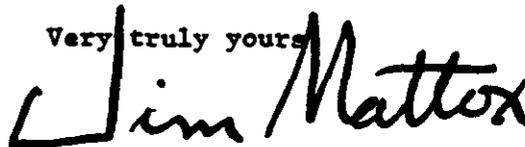
These federal regulations bar the release of the names at issue. A federal statute or administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 3(a)(1) of the Open Records Act. See Open Records Decision Nos. 373 (1983); 226 (1979); see also Johnson v. Wells, 566 F.2d 1016 (5th Cir. 1978). We therefore conclude that for purposes of section 3(a)(1), the information at issue here has been made "confidential by law" and cannot be disclosed except under the circumstances enumerated in the federal regulations discussed above.

S U M M A R Y

Because federal regulations prohibit the Texas Employment Commission from revealing the names of employers and employees who file appeals in unemployment compensation benefits cases, those

names are "confidential" within section 3(a)(1) of
the Texas Open Records Act.

Very truly yours

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, prominent "J" at the beginning.

JIM MATTOX
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