



**THE ATTORNEY GENERAL  
OF TEXAS**

September 20, 1989

**JIM MATTOX  
ATTORNEY GENERAL**

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

Dear Mr. Grossenbacher:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6755; this decision is OR89-301.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Texas Employment Commission received a request for the complete unemployment compensation file of a named individual, including initial claim documents; protest documents; the cassette tape of any appeal hearing; and any written decisions issued by the commission. The requestor is an attorney who represents neither the individual claimant nor the former employer. The commission seeks to withhold the requested information from disclosure under section 3(a)(1) of the act, as information deemed confidential by law, specifically federal regulations governing the administration of state unemployment compensation programs.

Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Federal regulations enacted pursuant to statutory authority regarding the confidentiality of records can be included within this section. See, e.g., Open Records Decision No. 403 (1983). In Open Records Decision No. 476 (1987), this office held that federal

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regulations make "claim information" in the files of a state unemployment compensation agency confidential, including the names of individuals who filed unemployment compensation benefit appeals.

In Attorney General Opinion H-404 (1974), issued before the federal regulations discussed in Open Records Decision No. 476 were promulgated, the attorney general held that information about the amount of benefits paid to specific individuals was public information as it was not protected by the confidentiality provisions of article 5221b-9(e) (now 9(g)), V.T.C.S., which protected "information secured from employers." That opinion held that unemployment compensation benefit amounts was not information about employees "secured from employers" and so was not protected from disclosure by the statute. Read together, Open Records Decision No. 476 and Attorney General Opinion H-404 mean that the amounts of unemployment compensation paid may be released, so long as individual claimants are not identified. Thus, "claim information," as defined by 20 C.F.R. § 603.2(c), about a particular named claimant is confidential and may not be released to the general public. See 20 C.F.R. § 603.7. General release of information with no identification of the claimant is permissible. The confidentiality of claim information precludes supplying claim information in response to a request that names or otherwise identifies an individual claimant. Thus, tape recordings of hearings constitute claim information containing identifying information about a particular claimant and may not be released.

Written decisions and determinations of the Commission were specifically held to be public information in Attorney General Opinion H-626 (1975). However, in light of Open Records Decision No. 476, written decisions and determinations or other information in a claimant's file may not be disclosed in response to a request for claim information relating to a particular claimant, since disclosure even of a decision with the name of a claimant deleted would reveal the identity of the claimant, or the fact that a named individual had applied for or received unemployment benefits -- information that the federal regulations makes confidential. Names, social security numbers and other information identifying individual claimants on written determinations and decisions of the commission may not be released.

Of course, access to claim information is available to the claimant and must be released to a claimant and to other specified individuals or entities pursuant to the provisions of the relevant federal regulations. See 20 C.F.R.

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§§ 603.5, 603.7(b)(1)-(3); Attorney General Opinion H-626. The requestor here, however, does not qualify under the regulations, as a person to whom claim information may be released and therefore all of the requested information may be withheld from him.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-301.

Yours very truly,

*Open Government Section  
of the Opinion Committee*

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