



May 21, 2002

Mr. Michael Jay Burns
Supervising Attorney
Information Release
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2002-2705

Dear Mr. Burns:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163246.

The Texas Workforce Commission (the “commission”) received a written request for the commission’s file concerning an unemployment compensation matter, which, you inform us, is the basis of a currently pending lawsuit in Montgomery County. You contend that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

To secure the protection of section 552.103 of the Government Code, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). Additionally, the governmental body must demonstrate that the litigation was pending or reasonably anticipated as of the day it received the records request. Gov’t Code § 552.103(c). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

Given your representations and our review of the submitted documents, we conclude that you have established that the requested information “relates” to litigation that was pending on the date the commission received the records request. Assuming that none of the information you submitted to this office has previously been obtained by all parties to the litigation, *see* Open Records Decision No. 349 at 2 (1982), the commission may withhold the submitted information at this time pursuant to section 552.103, with the following exceptions.

The submitted documents include final decisions issued by the commission. These decisions and any attachments incorporated therein are made public by statute and must be released to the requestor. Gov't Code § 2001.004 (state agency shall make available for public inspection all final orders, decisions, and opinions); Open Records Decision No. 161 (1977) and authorities cited therein (information made public by statute not protected by "litigation" exception); *see also* Gov't Code § 552.022(a)(12) ("final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases" not excepted from public disclosure unless made confidential by law).¹

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).

¹We also note that the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/RWP/sdk

Ref: ID# 163246

Enc: Submitted documents

c: Mr. Stephen H. Dimlich, Jr.
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(w/o enclosures)