OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 24, 2002

Ms. Alice Caruso
Assistant Disclosure Officer
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2002-3410

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164800.

The Texas Workforce Commission ("TWC") received a request for a copy of the file pertaining to a named claimant's wage claim and a copy of a decision issued by the TWC pertaining to the same wage claim. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
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> . . .
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> (12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases . . . .
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> . . .
>
> (17) information that is also contained in a public court record . . . .

Gov't Code § 552.022(a)(12). We have marked the information that is subject to section 552.022(a)(12) and (17). Section 552.103 is a discretionary exception and is not "other law" for the purpose of section 552.022. Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103). Therefore, TWC must release the information we have marked under section 552.022(a)(12) and (17). *See* Gov't Code § 552.022(a)(12), (17); Open Records Decision Nos. 315 (1982) (agency's final action in administrative process subject to predecessor of section 552.022(a)(12)), 106 (1975) (same).

With respect to the remainder of the submitted information, we address your argument under section 552.103 of the Government Code. Section 552.103 provides as follows:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
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> . . . .
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> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

TWC has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). TWC must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the payday claim file that is the subject of the instant request is also the basis of a lawsuit filed in the F-116th Judicial District Court, Dallas, Texas, with cause number 02-02175-F. Furthermore, you state that TWC is a party to the lawsuit. Based on your statements, we agree that the submitted information relates to pending litigation. Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Although you do not inform us of the identities of the opposing party or parties in the litigation at issue, it appears

that some of the submitted information may have already been obtained by the opposing parties. While you generally may withhold the submitted information under section 552.103, you must release any information that has already been obtained by the opposing party or parties in the pending litigation in addition to the information we have marked under section 552.022(a)(12) and (17).[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).

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[1]We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (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,

V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 164800

Enc: Submitted documents

c: Ms. Judy A. Clemensen
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Dallas, Texas 75202
(w/o enclosures)