



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1998

Mr. Bob Ramirez
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR98-1244

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115589.

The Harlandale Independent School District (the "district"), which you represent, received an open records request from the attorney of a former district employee for certain information in connection with the employee's appeal of the denial of unemployment benefits. Specifically, the requestor seeks the names and addresses of certain other district employees. You contend that the district may withhold the requested information pursuant to section 552.103 of the Government Code because of the employee's pending appeal before the Texas Workforce Commission (the "commission").

To secure the protection of section 552.103(a), 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) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* For purposes of section 552.103, this office considers a contested case under the Texas Administrative Procedure Act ("APA"), Government Code chapter 2001, to constitute "litigation." Open Records Decision No. 588 (1991) at 7 (construing statutory predecessor to the APA).

You contend that the matter currently before the commission regarding the unemployment claim involves an administrative, contested case akin to litigation. The provisions governing the commission are found in chapter 301 of the Labor Code. Section 301.0615(a) of the Labor Code states that, except as otherwise provided by Title 4, a hearing conducted under this title is not subject to subchapters C-H of chapter 2001 of the Government Code, the APA. Subchapters C-H are provisions dealing with contested cases under the APA. Moreover, section 2001.224 of the Government Code provides that subchapters C-H "do not apply to a hearing by the Texas Employment Commission [now the Texas Workforce Commission] to determine whether or not a claimant is entitled to unemployment compensation." We therefore conclude that you have not shown that a hearing conducted under title 4 of the Labor Code is "litigation" for purposes of section 552.103. Thus, the district may not withhold the requested district employees' names pursuant to section 552.103. The district therefore must release this information.

We note, however, that the requestor is also seeking the employees' home addresses. Although the attorney general will not ordinarily raise an exception that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.117 of the Government Code, which makes confidential the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees, but only if the respective employees requested that this information be kept confidential in accordance with section 552.024 of the Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987). *See also* Government Code § 552.352 (improper release of confidential information constitutes misdemeanor). The district may not, however, withhold this information if the respective employee made the request for confidentiality under section 552.024 after the district received the current request for information. *See* Open Records Decision No. 530 (1989) at 5.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

Ref.: ID# 115589

Enclosures: Submitted documents

cc: Ms. Alicia Butler
Attorney at Law
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(w/o enclosures)