



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 9, 2003

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

OR2003-0196

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# 174745.

The Texas Workforce Commission (the "commission") received a request for (1) the "[c]ommission decisions, long-form dissenting opinions, and any concurring opinions written by the other Commissioners," (2) "[s]ummaries for all such cases as prepared by the legal staff in the office of Commission Appeals," (3) and for the "[n]otes of all such cases prepared by the staff attorneys in the office of the Commissioner representing employers." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that some of the responsive information, which you have marked, is excepted from release pursuant to section 552.101 of the Government Code in conjunction with title 20, section 603 of the Code of Federal Regulations. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. In Open Records Decision No. 476 (1987), this office determined that "claim information" was confidential under federal regulations enacted pursuant to statutory authority. *See* 20 C.F.R. §§ 603.1 *et. seq.* "Claim information" means information regarding:

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

....

(3) The individual's current (or most recent) home address;

....

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

20 C.F.R. § 603.2(c)(1), (3), (5). Pursuant to title 20, section 603.7 of the Code of Federal Regulations, state unemployment compensation agencies, such as the commission, must protect the confidentiality of claim information. In Open Records Decision No. 476 (1987), this office determined that the names of employers and employees who file unemployment compensation appeals falls within the definition of "claim information" and that the federal regulations prohibit the commission from disclosing this information. In Open Records Decision No. 599 (1992), this office determined that federal regulations prohibit the disclosure of "wage information" except to an authorized requesting agency under certain circumstances. "Wage information" includes the social security numbers of employees. 20 C.F.R. § 603.2(b); *see also* Open Records Decision No. 599 at 6 (1992). Therefore, we conclude that you must withhold the identifying information of the claimants for unemployment insurance benefits and their employers, which we have marked, pursuant to section 552.101 in conjunction with federal law. However, we find that you may not withhold some of the information that you have marked as confidential under section 552.101 of the Government Code in conjunction with title 20 section 603 of the Code of Federal Regulations as this information does not fall into the categories of information protected by section 603.

You also assert that some of the submitted information, which you have marked, is excepted from release under section 552.103 of the Government Code. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. A governmental body 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. *University of Tex. Law Sch. v. Texas 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). The commission must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and have submitted to this office information showing, that a pending lawsuit has been filed in Dallas County Court at Law Number 1 against the commission. We thus find that you have shown that litigation is pending for purposes of section 552.103. Your representations and our review of the submitted information show that the information you have marked as excepted from release under section 552.103 is related to the pending litigation. We note however, that generally, 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). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. As it appears that some of the information you claim is excepted from release under section 552.103 has been provided to the opposing party in the anticipated litigation, we find that this information may not be withheld under section 552.103. You may withhold the remaining information, which we have marked, that has not been provided to the opposing party in the pending litigation pursuant to section 552.103. Finally, we 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).

Finally, you assert that some of the information, which you have marked, is excepted from release under section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5; *see also* Open Records Decision No. 676 (2002) (section 552.107(1) excepts a client government body's communications as defined by Texas Rule of Evidence 503).

You state, and the submitted information shows, that the responsive case analyses and notes, which you have marked, consist of confidential communications between commission attorneys and commissioners made for the purpose of the rendition of legal services for the commission. Based upon your representations and our review of the submitted information, we agree that the information that we have marked is subject to section 552.107. You may therefore withhold the portions of the responsive information that we have marked pursuant to section 552.107.

In summary, you must withhold the identifying information of the claimants for unemployment insurance benefits and their employers, which we have marked, pursuant to section 552.101 in conjunction with title 20 section 603.7 of the Code of Federal Regulations. You may withhold the information we have marked pursuant to section 552.103. You may withhold the case analyses and notes, which we have marked, pursuant to section 552.107. You must release the remaining responsive information. As our ruling is dispositive, we need not consider your arguments under section 552.111.

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).

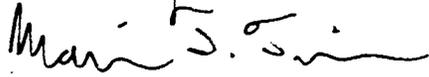
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Maverick F. Fisher". The signature is fluid and cursive, with a long horizontal flourish at the end.

Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 174745

Enc: Submitted documents

c: Mr. Bill Hammond  
President  
Texas Association of Business  
1209 Nueces  
Austin, Texas 78701  
(w/o enclosures)