



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2009

Lieutenant Carol Taylor  
Public Information Officer  
Taylor County Sheriff's Department  
450 Pecan Street  
Abilene, Texas 79602-1692

OR2009-09066

Dear Lieutenant Taylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 347735.

The Taylor County Sheriff's Department (the "department") received two requests from the same requestor for information regarding a specified incident and the statements of specified department officers regarding the incident and a specified phone call. You state that the department does not have a statement from one of the named officers.<sup>1</sup> You claim that the submitted 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.

Section 552.103 of the Government Code provides in part 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

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(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.

Gov't Code § 552.103(a), (c). 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 was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Corryn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the submitted information relates to an unemployment compensation claim against the department and Taylor County. You also indicate that the claim was pending at the Texas Workforce Commission (the "TWC") when the department received this request. You therefore assert that the department is a party to pending litigation for the purposes of section 552.103. We note that a contested case under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, constitutes litigation for purposes of section 552.103. *See* Open Records Decision No. 588 at 7 (1991) (contested case under statutory predecessor to APA constituted litigation for purposes of statutory predecessor to Gov't Code § 552.103). Accordingly, we will consider whether a claim for unemployment compensation is a contested case under the APA. The TWC administers the Texas Unemployment Compensation Act (the "TUCA") under title 4 of the Labor Code. The TUCA is found in subtitle A of title 4. *See* Labor Code § 201.001 *et seq.* The provisions governing the TWC are found in subtitle B of title 4. *See id.* § 301.001 *et seq.* Section 301.0615 of the Labor Code states that except as otherwise provided by title 4, a hearing conducted under title 4 is not subject to subchapters C-H of the APA. *See id.* § 301.0615(a)(2). Subchapters C-H are applicable to contested cases under the APA. Moreover, section 2001.224 of the APA provides that subchapters C-H "do not apply to a hearing by the [TWC] to determine whether or not a claimant is entitled to unemployment compensation[.]" Gov't Code § 2001.224. We therefore find that you have not demonstrated that the claim against the department for unemployment compensation constitutes litigation for the purposes of section 552.103 of the Government Code. Therefore,

the department may not withhold the information at issue under section 552.103 of the Government Code. As you claim no other exception to disclosure, the submitted information must be released to the requestor in its entirety.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 347735

Enc. Submitted documents

c: Requestor  
(w/o enclosures)