



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2011

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2011-08545

Dear Ms. Benton:

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# 420993 (Ref.# LGL-11-454).

The City of Waco (the "city") received a request for all "DRS Cover Sheets" pertaining to a specified date. You claim the submitted DRS manifest cover sheets are 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:

(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.

...

(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 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 the governmental body received the request for information, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

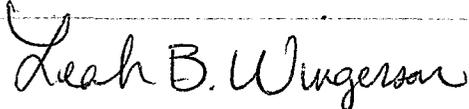
You state the submitted information relates to an unemployment compensation claim filed with the Texas Workforce Commission (the "TWC") against the city by the requestor after his employment with the city was terminated. You inform us the requestor's claim was denied and the requestor is now appealing the denial. You, therefore, assert the city reasonably anticipates litigation for purposes of section 552.103 because the "administrative process has not been completed." We note 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) (stating contested case under statutory predecessor to APA constituted litigation for purposes of statutory predecessor to section 552.103 of the Government Code). 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 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 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 you have not demonstrated the claim against the city for unemployment compensation constitutes litigation for purposes of section 552.103 of the Government Code. Consequently, the city may not withhold the submitted information under section 552.103 of the Government Code. As you have not claimed any other exceptions to disclosure, the city must release the submitted information.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 420993

Enc. Submitted documents

c: Requestor
(w/o enclosures)