



**JOSÉ R. RODRÍGUEZ**  
COUNTY ATTORNEY

EL PASO COUNTY TEXAS  
COUNTY COURTHOUSE  
500 E. SAN ANTONIO, ROOM 203  
EL PASO, TEXAS 79901

(915) 546-2050  
FAX: (915) 546-2133

RECEIVED  
MAR 27 2001  
OPINION COMMITTEE

FILE # ML-41934-01  
I.D. # 41934

March 21, 2001

RECEIVED  
MAR 26 2001  
OPEN RECORDS DIVISION

**By Certified Mail, Return Receipt Requested**

The Honorable John Cornyn  
Attorney General of The State of Texas  
Attn: Opinion Committee Chairperson  
P.O. Box 12548  
Austin, Texas 78711-2548

RQ-0369-JC

**Re: Closed meeting; complaints concerning administration of health benefits program**

Dear Attorney General Cornyn:

I am soliciting your opinion on behalf of the Board of Trustees of the Risk Pool for the El Paso County Health Benefits Program ("the Board"). My question is whether the Board may consider a complaint concerning administration of the El Paso County Health Benefits Program in a closed meeting.

The Risk Pool for the El Paso County Health Benefits Program ("the Risk Pool") was created under Section 172.005(a) of the Texas Local Government Code, which provides that "[a] political subdivision may establish a risk pool...to provide health and accident coverage for officials, employees, retirees, and their dependents." Tex. Loc. Gov't Code Ann. § 172.005(a) (Vernon 1999). The Risk Pool is governed by Chapter 172 and Chapter 157, Subchapter A of the Texas Local Government Code.

Pursuant to Section 172.006(b) of the Texas Local Government Code, administration of the El Paso County Health Benefits Program has been delegated to a third party administrator. See *id.* § 172.006(b) (Vernon Supp. 2001). Occasionally, the Board will receive a complaint concerning a particular action by the third party administrator. Specifically, a covered person, that is, a county official, employee, or retiree, or a dependent of one of these persons, may bring before the Board a complaint regarding "benefits, claims processing, participating providers, etc." See Bylaws of the Board of Trustees of the Risk Pool for the El Paso County Health Benefits Program, art. I, § 1.8 (Attachment "A"). Many

such complaints relate to the third party administrator's denial of a medical claim. In reviewing the handling of such claims, the Board may consider information presented orally by the complainant, including details of medical history, diagnosis, and treatment. The Board may also consider medical records and other documentation provided by the complainant.

Section 551.074 of the Texas Government Code provides that a governmental body is not required to conduct an open meeting "to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee." Tex. Gov't Code Ann. § 551.074(a)(1) (Vernon 1994) ("Section 551.074"). Although neither the courts nor the Attorney General have addressed whether deliberation of a complaint concerning administration of a county health benefits program is permitted in a closed meeting under Section 551.074, closed-meeting deliberation of analogous matters has been addressed.

Both the courts and the Attorney General have concluded that closed-meeting deliberation of aspects of the compensation of individual public employees is generally permitted under Section 551.074. See, e.g., James v. Hitchcock Indep. Sch. Dist., 742 S.W.2d 701 (Tex. App.—Houston [1st Dist.] 1987, writ denied) (unilateral reduction in hours and compensation may be considered in closed meeting unless employee requests open meeting); Op. Tex. Att'y Gen. No. JM-1191 (1990) ("wages, hours, or conditions of work" may be considered in closed meeting unless employee objects); Op. Tex. Att'y Gen. No. JM-1112 (1989) ("wages, hours, or conditions of work" may be considered in closed meeting); Op. Tex. Att'y Gen. No. H-496 (1975) ("the raising, lowering, or establishing of the salary of an individual employee" may be considered in closed meeting). Because the El Paso County Health Benefits Program is at least partly funded by the county for all beneficiaries, see Notice from Board of Trustees of the Risk Pool for the El Paso County Health Benefits Program, 2 (Attachment "B"), it is likewise an aspect of the compensation of public employees and thus should be found to fall within the range of matters that may be deliberated in a closed meeting under Section 551.074.

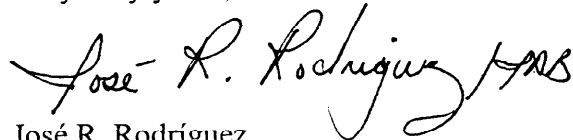
Further, with respect to complaints concerning the administration of health benefits of retirees and dependents of covered persons, it has been held that, as long as "personnel issues" are involved, Section 551.074 does not restrict closed meetings "only to actions affecting a current employee." Hispanic Educ. Comm. v. Houston Indep. Sch. Dist., 886 F. Supp. 606, 611 (S.D. Tex. 1994) (personnel issues involving a prospective employee may be considered in a closed meeting).

In articulating the rationale behind Section 551.074, the Amarillo Court of Appeals has explained that "because matters involving particular employees often implicate private, confidential, or embarrassing issues," the government has "an interest in avoiding the needless public disclosure of such matters." Gardner v. Herring, 21 S.W.3d 767, 777 (Tex. App.—Amarillo 2000, no pet.). Thus, although "[d]iscussion about policy and its application to employees in general or a class of unnamed employees" must occur in an open meeting, discussion of matters relevant only to a particular employee is permitted to occur behind closed doors to avoid "embarrassment being foisted upon particular

individuals” or “attributi[on of] private matters to particular individuals.” *Id.* Further, Section 551.074 is intended “to prevent unjustified harm to the individual and to preserve employee morale generally.” *Notes—Open Meetings Act*, 49 Tex. L. Rev. 764, 771 (1971). In addition, it has been suggested that Section 551.074 is based on “the rationale that public employees should not be placed in a more public position than their counterparts in private organizations” with respect to individual employment matters. *Id.* at n.41. These rationales apply equally to a health benefits program as to other aspects of a public employee’s compensation.

If the Attorney General concludes that closed-meeting deliberation of a complaint concerning administration of a county health benefits program is not permitted under Section 551.074, I would add the following two questions regarding the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 (2001): (1) whether such regulations permit closed-meeting deliberation of complaints concerning administration of a county health benefits program when individually identifiable health information is involved; and (2) whether such regulations prohibit open-meeting deliberation of such complaints.

Very truly yours,

A handwritten signature in cursive script that reads "Jose R. Rodriguez" followed by a stylized flourish.

José R. Rodríguez  
El Paso County Attorney