



October 25, 2001

Mr. J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2001-4897

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153936.

The Texas Workforce Commission (the "commission") received a request for a list of all unemployment case appeals discussed at weekly docket meetings, case summaries and notes, and written records showing the vote. After receipt of the request, the commission provided an estimate of charges to the requestor. *See* Gov't Code § 552.2615 (requiring governmental body to send an estimate of charges if charges exceed \$40). Pursuant to section 552.2615(b) of the Government Code, a request for information is considered to have been withdrawn by the requestor if the requestor does not accept the estimated charges or modify the request within ten days after the date the statement is sent to the requestor.

By letter dated August 29, 2001, the requestor requested copies of commission decisions, case summaries, and notes for appeals decided by the commission from April 1, 2001 to the present. Thus, we believe that the requestor has modified the original request and, therefore, we will only address the information responsive to the modified request. By letter dated September 24, 2001, the requestor withdrew the request for case notes. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You state that you have released copies of commission decisions with the identifiers of claimants for unemployment insurance benefits and employers redacted without requesting a decision from this office. Pursuant to section 552.301(a) of the Government Code, a governmental body must request a decision from this office in order to withhold information unless there has been a previous determination about whether the information falls within one of the exceptions to disclosure in the Public Information Act. You claim that the identifiers may be withheld from disclosure in accordance with the holding in *Rainbow Group, Ltd. v. Texas Employment Commission*, 897 S.W.2d 946 (Tex. App.—Austin 1995, writ denied). *Rainbow*, however, pertains to information from employer reports and you have not explained that the identifiers in the commission decisions were obtained from employer reports. Accordingly, you may not rely on *Rainbow* as a previous determination for the identifiers in the commission decisions. See Open Records Decision No. 673 (2001) (providing the criteria which must be met for a governmental body to rely on a ruling as a previous determination). Because this office has not issued a previous determination with regard to identifiers of claimants for unemployment insurance benefits and employers, we will address the redaction of the employee and employer identifiers in the commission decisions. See *id.*

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;

....

(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), (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. Therefore, we conclude that you must withhold the identities of the claimants for unemployment insurance benefits and the employers in the commission decisions pursuant to section 552.101 in conjunction with federal law.

You assert that the summaries in Exhibit F are excepted under section 552.107(1) of the Government Code. Section 552.107(1) excepts information that an attorney of a political subdivision cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) 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. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal opinion or advice. ORD 574 at 3. In addition, purely factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You explain that staff attorneys prepare summaries of appealed cases for the commissioners. The attorneys advise the commissioners on items of testimony, evaluate the decision and make legal recommendations. After reviewing Exhibit F, we conclude that the summaries reveal legal advice or opinion and, therefore, may be withheld under section 552.107(1) of the Government Code. Having found the summaries excepted under section 552.107(1), we need not address your remaining arguments.

In conclusion, you must withhold the identities of the claimants for unemployment insurance benefits and the employers in the commission decisions pursuant to section 552.101 in conjunction with federal law. You may also withhold the summaries under section 552.107 of the Government Code.

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

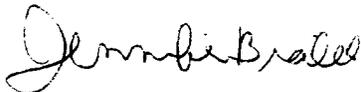
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dept. 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 General Services 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. 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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153936

Enc: Submitted documents

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