



May 15, 2002

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

OR2002-2580

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# 162901.

The Texas Workforce Commission (the “commission”) received a request for information relating to four named individuals and a business entity. You state that the commission has released most of the requested information. The commission takes no position as to whether the remaining requested information is excepted from disclosure. The commission believes, however, that this request for information may implicate the interests of third parties. The commission notified an attorney for those parties of this request for information and of their right to submit arguments to this office as to why the remaining information should not be released.¹ The commission also submitted the information in question, which we have reviewed.

Section 552.305(d) allows an interested third party ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, this office has received no correspondence from any of the third parties whose interests may be affected by the release of the requested information. Thus, none of these parties has demonstrated that any of the submitted information is excepted from public disclosure. *See also* Gov’t Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990) (attorney general will grant exception to disclosure under statutory predecessor to Gov’t Code § 552.110(a) if governmental body takes no position, third party makes *prima*

¹*See* Gov’t Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under chapter 552 of Government Code in certain circumstances).

facie case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

We note, however, that the submitted information contains social security numbers. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A social security number may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security numbers in question here were obtained or are maintained pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the commission to obtain or maintain a social security number. Thus, we have no basis for concluding that these social security numbers were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a social security number, the commission should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The submitted information also contains e-mail addresses that may be confidential under section 552.137 of the Government Code. This exception, which the Seventy-seventh Legislature added to chapter 552 of the Government Code, provides as follows:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. We have marked e-mail addresses of private individuals that appear in the submitted information. The commission must withhold these e-mail addresses under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure.

In summary, the commission may be required to withhold social security numbers under section 552.101 of the Government Code in conjunction with federal law. The commission

must withhold the e-mail addresses of private individuals under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure. The commission must release the remaining information.

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).

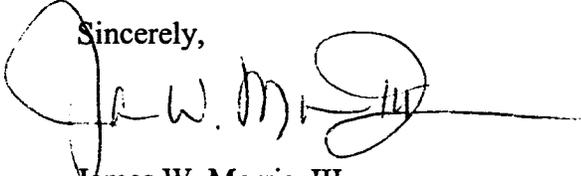
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 162901

Enc: Submitted documents

c: Mr. Jerry Watson
Ms. Vicki Watson
6906 Harvest Glen Drive
Humble, Texas 77346
(w/o enclosures)