



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 31, 2003

Mr. Craig H. Smith
Director of Legal Services
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

OR2003-5279

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185178.

The Workers' Compensation Commission (the "commission") received a written request for the following information:

1. A list of the employers who have been designated as Hazardous or Extra-Hazardous Employers from December 1, 1997 to present;
2. The date of such designation; and
3. The standard industrial classification code (or description).

You state that information responsive to items 1 and 2 is being provided to the requestor. You contend, however, that the remaining information coming within the scope of the request, a representative sample of which you submitted to this office, is exempted from required disclosure pursuant to section 552.101 of the Government Code.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 No. 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.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) You contend that the requested Standard Industrial Classification ("SIC") Codes are made confidential under section 301.081 of the Labor Code, and thus must be withheld from the public pursuant to section 552.101 of the Government Code. Section 301.081 provides in relevant part as follows:

- (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- (b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- (c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

In Open Records Decision No. 599 (1992), this office interpreted the predecessor to section 301.081(c) to apply to information the commission obtained from the employers' records and from the reports that employers are required to file with the commission. In that ruling we specifically found that the SIC codes are confidential, stating:

The SIC code number is based on information provided by the employing unit on the initial Status Report, Form C-1. The C-1 form contains a list of ninety-nine short titles of business descriptions with corresponding code numbers of 01 through 99. In completing this form, an employer is required to select the title which most closely describes his or her business and enter the appropriate code number in the space provided. That number is then used by [the Texas Employment Commission] to assign a beginning tax rate for new employers and to calculate the new tax rate for a given industry. Since a SIC code number is chosen by an employer to describe the business, it is information provided by the employer and therefore confidential within [the predecessor to section 301.081].

Open Records Decision No. 599 at 4. On this basis, we conclude that the requested SIC codes are made confidential under section 301.081 of the Labor Code and thus must be withheld from the public pursuant to section 552.101 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 Dep't of Pub. 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 'James W. Morris, III', with a long horizontal flourish extending to the right.

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

JWM/RWP/sdk

Ref: ID# 185178

Enc: Submitted documents

c: Mr. Chris Remmert
Loss Prevention Supervisor
Texas Municipal League Intergovernmental Risk Pool
1821 Rutherford Lane, First Floor
Austin, Texas 78754
(w/o enclosures)