



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2004

Ms. Margo Kaiser
Supervising Attorney
Open Records Unit
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78778-0001

OR2004-4238

Dear Ms. Kaiser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202074.

The Texas Workforce Commission (the "commission") received a request for information pertaining to "requests for any assistance under the Trade Adjustment Assistance Reform Act of 2002, that may have been filed with [the commission] on behalf of [specified] workers at the Kilgore, Texas manufacturing facility of Mansfield Plumbing Products LLC." You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the Trade Adjustment Assistance Reform Act of 2002 (the "Trade Act"), 19 U.S.C. § 2271 *et seq.*, and section 617.57 of title 20 of the Code of Federal Regulations.² Section 2272 of title 19 of the United States Code, in part, provides:

¹ 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.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(a) In general

A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that –

- (1) a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated[.]

19 U.S.C. § 2272(a)(1). In order to establish eligibility for trade adjustment assistance, a petition for certification of eligibility to apply for adjustment assistance for a group of workers must be filed with the United States Department of Labor (the "department"). *See* 19 U.S.C. § 2271(a). In addition, each covered worker must apply individually for assistance after the petition has been certified. *See id.* § 2291. Section 2311 of title 19 of the United States Code provides, in part, that the secretary of the department (the "secretary") is authorized to enter into an agreement with any state. *See id.* § 2311(a). Under such an agreement, the cooperating state agency, as agent of the United States, will receive applications for, and will provide, payments as authorized under the Trade Act. *See id.* Further, section 2320 of title 19 of the United States Code provides that the secretary is authorized to "prescribe such regulations as may be necessary to carry out the provisions of this part." 19 U.S.C. § 2320.

Federal regulations prescribed by the secretary at part 617 of title 20 of the Code of Federal Regulations clarify the extent to which information that is in records maintained by a cooperating state agency under the Trade Act are confidential. Section 617.57 of title 20 of the Code of Federal Regulations, titled "Recordkeeping; disclosure of information," provides:

(b) Recordkeeping. Each state agency will make and maintain records pertaining to the administration of the [Trade] Act as the [s]ecretary requires and will make all such records available for inspection, examination and audit by such Federal officials as the [s]ecretary may designate or as may be required by law. Such recordkeeping will be adequate to support the reporting of [Trade Act] activity on reporting form ETA 563 approved under OMB control number 1205-0016.

(a) Disclosure of information. Information in records maintained by a State agency in administering the [Trade] Act shall be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to UI and the entitlement of individuals thereto may be disclosed under the applicable State law. Such information shall not, however, be disclosed to an employer or any other person except to the extent necessary to obtain information from the

employer or other person for the purposes of this Part 617. This provision on the confidentiality of information maintained in the administration of the [Trade] Act shall not apply, however, to the [d]epartment or for the purposes of § 617.55 or paragraph (a) of this section, or in the case of information, reports and studies required pursuant to § 617.61, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or regulations of the [d]epartment promulgated thereunder (see 29 CFR Parts 70 and 70a).

20 C.F.R. § 617.57.

You indicate that the commission maintains the submitted information in conjunction with its authority to administer the Trade Act for the purpose of providing adjustment assistance for workers. You further indicate that federal regulations specifically exclude employers from access to trade adjustment assistance information in records maintained by a state agency in administering the Trade Act, except to the extent necessary to obtain information from the employer or other person for the purposes of administering the trade adjustment assistance program. *See id.* You inform us that the requestor has not demonstrated that she is authorized to receive the submitted information. We note that in this instance the requestor represents the employer of the workers whose information is at issue. Further, based on our review of section 617.57 of title 20 of the Code of Federal Regulations, we do not otherwise find that any of the exceptions to disclosure provided in that section apply in this instance. Accordingly, we conclude that the commission must withhold the entirety of the submitted information pursuant to section 552.101 of the Government Code in conjunction with 19 U.S.C. § 2271 *et seq.* and section 617.57 of title 20 of the Code of Federal Regulations.

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;

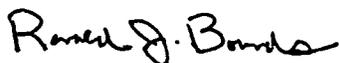
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 202074

Enc. Submitted documents

c: Ms. Eileen M. Cummo
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(w/o enclosures)