



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2005

Ms. Lona Chastain
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2005-02904

Dear Ms. Chastain:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221247.

The Texas Workforce Commission (the "commission") received a request for copies of all "Notice of Tax Liens" from November and December of 2004 for all Texas counties. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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 other statutes. Part 603 of title 20 of the Code of Federal Regulations generally makes confidential "claim information" from a state unemployment compensation agency. *See* 20 C.F.R. § 603.7(a). Section 603.2 defines "claim information" as the following:

¹We 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.

- (1) Whether an individual is receiving, has received or has applied for unemployment compensation;
- (2) The amount of compensation the individual is receiving or is entitled to receive;
- (3) The individual's current (or most recent) home address; and
- (4) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.
- (5) Any other information contained in the records of the State unemployment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

Id. § 603.2(c). This office has previously concluded the regulations found at part 603 send a clear message that "claim information" in the files of a state unemployment compensation agency is to be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See id.* § 603.7; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7, state unemployment compensation agencies, such as the commission, must protect the confidentiality of claim information. In addition, the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the "department") in administering state unemployment insurance ("UI") programs, and a department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. Thus, unless otherwise authorized to release claim information under part 603 or UI Program Letter No. 34-97, the commission must withhold claim information in its entirety from a requestor under the Act. *See* 20 C.F.R. pt. 603; UI Program Letter 34-97 (allowing disclosure to private entity under a written agreement that requires informed consent from the individual to whom the information pertains).

The submitted notices of tax liens contain two types of information: (1) the name and address of the individual or company whose property is being encumbered by the lien and (2) the amount of the encumbrance. After review of the submitted information, we find that it does not reveal any of the following: (1) whether an individual is receiving, has received, or has applied for unemployment compensation; (2) the amount of compensation the individual is receiving or is entitled to receive; (3) the individual's current (or most recent) home address; or (4) whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay. *See* 20 C.F.R. § 603.2(c)(1)-(4). We also find the commission has failed to establish that the submitted information is needed by a requesting agency to verify eligibility for, and the amount of, benefits. *See id.* § 603.2(c)(5). We note that the name of an employer constitutes claim information for purposes of section 603.2 only if its release would reveal the identity of an employee who

is receiving, has received, or has applied for unemployment compensation. *See generally* Open Records Decision No. 476 at 5-6. Therefore, we conclude that the commission has not established that the submitted information constitutes "claim information" for purposes of section 603.2. *See* 20 C.F.R. § 603.2(c). Accordingly, the requested information is not confidential under federal law, and the commission may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses section 301.081 of the Labor Code, which provides the following:

- (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.
- (d) A person commits an offense if the person is an employee or member of the commission who violates any provision of this section. An offense under this subsection is punishable by a fine of not less than \$20 nor more than \$200, confinement in jail for not more than 90 days, or both fine and confinement.

Labor Code § 301.081. This office has previously concluded that the term "employment information" for purposes of section 301.081(c) refers to the information obtained from the employers' records and from the reports that employers are required to file with the commission. Open Records Decision No. 599 at 2 (1992) (construing former V.T.C.S. art. 5221b-9). This includes information the commission requires employers to submit for purposes of determining an employer's tax liability or evaluating a claim for unemployment insurance benefits from a former employee. *Id.*; *see also* Labor Code § 301.001 (commission must administer state unemployment insurance program).

After review of your arguments and the submitted information, we conclude you have not established that, for purposes of section 301.081, the submitted information consists of employment information obtained from the employers' records and from reports that

employers are required to file with the commission. *See* Labor Code § 301.081(c). Therefore, the submitted information is not confidential under section 301.081, and the commission may not withhold it under section 552.101 of the Government Code on that ground. Instead, the commission must release the submitted information to the requestor.²

The commission also requests previous determinations regarding the following categories of information: (1) employer specific tax information referenced in Open Records Decision No. 599 (1993), (2) employer specific unemployment compensation tax lien records, (3) employer and claimant specific unemployment compensation fraud investigation records, (4) employer and claimant specific unemployment compensation benefits and tax appeals records that occur prior to judicial review, and (5) any other claimant or employer specific information in files and records of the commission that constitutes unemployment compensation (benefits and tax) claim information the commission considers necessary for the proper administration of this title. We note that the only information at issue is notices of tax liens. We decline to issue the requested previous determinations at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us, and 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

²We note you inform us that the requested notices of tax liens have all been filed with county clerks. *See* Labor Code §§ 61.081(a) (final commission order against employer indebted to the state for penalties or wages is a lien on all property belonging to employer), 61.082(a) (chapter 113 of Tax Code governs enforcement of lien established under section 61.081); Tax Code §§ 113.002(a) (comptroller must issue and file tax lien notice), 113.005(a)(1) (on receipt of tax lien notice from comptroller, county clerk must immediately record notice in state tax lien book); *see also* Tax Code § 113.006(a) (filing and recording of tax lien notice constitutes record of notice).

Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg .

Ref: ID# 221247

Enc. Submitted documents

c: Mr. Paul Grivich
480 Claremore Street
Corpus Christi, Texas 78412
(w/o enclosures)