



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 9, 2006

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

OR2006-04774

Dear Ms. Kaiser:

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# 248609.

The Texas Workforce Commission (the "commission") received a request for the entire file concerning a named individual including unemployment compensation records, applications for compensation, and hearing tapes. You inform us that the commission will release any records of unemployment insurance claims filed by this individual against the requester's client, to the extent that such records exist.<sup>1</sup> 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.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

by other statutes. The regulations found at part 603 of title 20 of the Code of Federal Regulations 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* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies such as the commission must protect the confidentiality of claim information. "Claim information" means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as "[a]ny 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." *See* 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of "claim information" and that the federal regulations prohibit the commission from disclosing this information. *See* Open Records Decision No. 476 at 4 (1987).

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 pursuant to section 552.101 of the Government Code in conjunction with these provisions. *See* 20 C.F.R. § 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).

You state that none of the release provisions in the federal directive are applicable in this instance. Based on your representations and our review of the submitted information, we agree that the submitted claim information is made confidential by federal law and therefore must be withheld from disclosure under section 552.101 of the Government Code in conjunction with federal law.

You also raise section 552.101 in conjunction with section 301.081 of the Labor Code. This section provides in part:

- (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of [title 4 of the Labor Code.] 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.

Labor Code § 301.081(a)-(c). In Open Records Decision No. 599 (1992), we concluded that the “employment information” addressed in section 301.081(c) refers to information obtained from employers’ records and from reports that employers are required to file with the commission. This includes information the commission requires employers to submit for purposes of determining an employer’s tax liability or evaluating a claim for UI benefits from a former employee. *See* Open Records Decision No. 599 at 2-3 (addressing statutory predecessor); *see also* Labor Code § 301.001 (commission shall administer state UI program). However, information that the commission creates and assigns to an employer is not confidential under section 301.081 because it was not obtained from the employer’s records. *See* Open Records Decision 559 at 5.

You state that the submitted records also contain wage record information compiled from quarterly reports that were submitted to the commission for the purpose of administering the state UI program. Based on your representations, we conclude that the submitted wage record information is confidential under section 301.081 of the Labor Code and must also be withheld from the requestor under section 552.101 of the Government Code.

In summary, the commission must withhold the submitted claim information under section 552.101 of the Government Code in conjunction with federal law. Further, the submitted wage record information must be withheld under section 552.101 in conjunction with section 301.081 of the Labor Code.

The commission also requests a previous determination that unemployment insurance claims and tax records are exempt from public disclosure under the Act. We decline to issue a previous determination 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; 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, 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 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); *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 Office of the Attorney General 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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/krl

Ref: ID# 248609

Enc. Submitted documents

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