ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2006

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-001

OR2006-08550

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# 255615.

The Texas Workforce Commission (the "commission") received a request for all records concerning three named individuals and two companies. 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 information.[1]

You state that the responsive information consists of confidential unemployment insurance claim and wage record information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. The regulations found at section 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,"

[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.

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." 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).

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. A department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. You state that "the requestor does not fall into any of the exceptions to the confidentiality requirements imposed by federal and state laws and regulations." However, we note that the requestor is a public official. The commission informs us that release is permitted to public officials under UI Program Letter 34-97 "only if the public official agrees to maintain the confidentiality of the information provided." The commission further informs us that "The requestor has not returned to the Agency a copy of a signed confidentiality agreement or indicated in any manner that the requestor will maintain the confidentiality of the requested records." Therefore, the commission must withhold the submitted claim information pursuant to section 552.101 of the Government Code in conjunction with these federal provisions.

You also claim that the responsive information contains wage records that are confidential under section 301.081 of the Labor Code, which is encompassed by section 552.101 of the Government Code. Section 301.081 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 unemployment insurance benefits from a former employee. Open Records Decision No. 599 at 2 (1992) (predecessor statute); *see also* Labor Code § 301.001 (commission shall administer state unemployment insurance program). You state that the submitted information includes wage records compiled from quarterly reports submitted to the commission for administration of the state unemployment insurance program. Based on your representations and our review, we determine that the wage record information is confidential under section 301.081 of the Labor Code and must be withheld 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. The commission must withhold the wage record information under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor 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, 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,

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 255615

Enc. Submitted documents

c: Ms. Sharon Stewart
Secretary, Felony Intake
Criminal District Attorney
Brazoria County
111 East Locust, RM 408A
Angleton, Texas 77515
(w/o enclosures)