ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2006

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street, Room 266
Austin, Texas 78778-0001

OR2006-12473

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# 263396.

The Texas Workforce Commission (the "commission") received a request for all records relating to a named individual, including wage information. You state that the commission will release some information to the requestor. You claim that the submitted 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 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. You claim that the submitted wage records are confidential under section 301.081 of the Labor Code, which 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

[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.

> 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.
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> (c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the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 consists of 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 submitted information is confidential under section 301.081 of the Labor Code. Accordingly, we conclude the commission must withhold the submitted information under section 552.101 of the Government Code as information made confidential by law.

The commission also requests a previous determination that wage records are exempt from public disclosure under the Act, unless authorized under part 603 of title 20 of the Code of Federal Regulations or UI Program Letter No. 34-97. 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,

Lisa V. Cubriel

Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 263396

Enc. Submitted documents

c: Ms. Rosemary Sage Jones
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(w/o enclosures)