



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 27, 2006

Ms. Margo M. Kaiser
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778

OR2006-12703

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# 263050.

The Texas Workforce Commission (the "commission") received a request for information pertaining to all Unemployment Insurance ("UI") claims filed by a named individual. You state that, to the extent it exists, information regarding claims to which the requestor's client is a party will be released. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of information you have submitted.¹

Initially, we note that the commission was untimely in its request for an attorney general decision pursuant to section 552.301(b) of the Government Code. *See Gov't Code* § 552.301. Under section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving

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.

the request. *See id.* § 552.301(a), (b). Although the commission received the request for information on August 3, 2006, its request for a decision from this office was not faxed until August 24, 2006. Consequently, we find that the commission failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason for non-disclosure generally exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because you raise sections 552.101 and 552.147 of the Government Code, which can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the submitted 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. You state that the submitted information consists of confidential UI claim, tax, and wage record information. 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," 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 UI programs, and a department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. You inform us that "the requestor does not fall into

any of the exceptions to the confidentiality requirements imposed by federal and state laws and regulations.” Based upon your representations, we conclude that the commission must withhold the submitted claim information under section 552.101 of the Government Code in conjunction with federal law. *See* UI Program Letter 34-97 (allowing disclosure to “private entity under a written agreement which requires ‘informed consent’ from the individual to whom the information pertains”); *see also* 20 C.F.R. pt. 603.

You also claim that the submitted tax and wage records are confidential under 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 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.

Labor Code § 301.081. 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. *See* Open Records Decision No. 599 (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. 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 tax and wage records that were compiled from quarterly reports submitted to the commission for the purpose of administering the state UI program. Based upon your representations, we conclude that the commission must withhold the submitted tax and wage records under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor 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 submitted tax and wage records under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code.²

The commission requests a previous determination that unemployment insurance claims and wage records be 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 and 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).

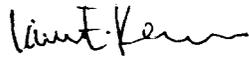
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

²As our ruling is dispositive, we do not reach your remaining argument under section 552.147 of the Government Code.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/krl

Ref: ID# 263050

Enc. Submitted documents

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(w/o enclosures)