



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2007

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

OR2007-01369

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# 271087.

The Texas Workforce Commission (the "commission") received a request for records filed pursuant to Texas wage-and-hour and employment discrimination laws relating to named employers and workers. The request specifically excludes records that are related to employees other than the named workers. The commission states that it has no records regarding the named workers that involve the named employers. 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.<sup>1</sup>

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public

---

<sup>1</sup>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.

disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The commission received the request for information on November 7, 2006, but did not request a ruling from this office until December 4, 2006. Thus, 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* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.-Austin 1990, no writ); *Open Records Decision No. 319* (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *Open Records Decision No. 150* (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires you to withhold 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," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You assert that the requested information "can only be compiled from quarterly reports and other reports submitted to the agency for the purpose of administering the state Unemployment Insurance program" and contend that the submitted information is excepted under state and federal law governing unemployment insurance tax records. Section 301.081 of the Labor Code 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. 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 contains records compiled from 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.

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,

A handwritten signature in black ink that reads "Kara A. Batey". The signature is written in a cursive style with a large, looped 'y' at the end.

Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/krl

Ref: ID# 271087

Enc. Submitted documents

c: Ms. Brooke McClelland  
Southern Migrant Legal Services  
101 Church Street, Suite 325  
Nashville, Texas 37201  
(w/o enclosures)