



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2007

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

OR2007-02243

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# 271989.

The Texas Workforce Commission (the "commission") received a request for unemployment information pertaining to a named individual. You state that the commission will provide the requestor, who represents a named employer, with records pertaining to that employer, to the extent such information exists; however, 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

You state that the submitted 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." This section encompasses information protected by other statutes.

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.

You claim that the submitted information is confidential under federal regulations. We note that 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 unemployment insurance (“UI”) programs, and section 603.5 specifies the conditions under which such claim information may be released. *See* 20 C.F.R. § 603.5 (lists permissible disclosures of confidential claim information). You state that the submitted records include UI claim information. You also state that the requestor does not fall into any of the exceptions to the confidentiality requirements imposed by the applicable federal and state laws and regulations. We note, however, that the requestor is an attorney who represents a party to a claim. Therefore, we conclude that although the information at issue is confidential, it must be released if any of the release provisions in part 603 of title 20 of the Code of Federal Regulations apply. *See* 20 C.F.R. § 603.5(d)(1) (allowing disclosure under certain circumstances on basis of “informed consent” to agent or attorney of individual or employer). Otherwise, the commission must withhold the submitted claim information under section 552.101 of the Government Code in conjunction with federal law.

You also claim that the responsive 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. This office interpreted the predecessor provision of section 301.081(c) to apply to information the commission obtained from the records and 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). You state that the submitted information includes wage records that were compiled from quarterly reports submitted to the commission for the purpose of administering the state UI program. Based on your representations, we conclude that the commission must withhold the wage records under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code.

To conclude, unless otherwise authorized to release the information under part 603 of title 20 of the Code of Federal Regulations, the commission must withhold the submitted claim information under section 552.101 of the Government Code in conjunction with federal law. The commission must also withhold the wage records under section 552.101 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 271989

Enc. Submitted documents

c: Ms. Nancy Guajardo
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(w/o enclosures)