



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2007

Ms. Chelsea Thornton
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2007-04288

Dear Ms. Thornton:

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# 276289.

The Office of the Governor (the "governor") received a request for communications pertaining to the enforcement of contracts made under the Texas Enterprise Fund. You state that the responsive information was received from the Texas Workforce Commission (the "commission"), and that the commission would submit arguments to this office related to the disclosure of the responsive information. We have received arguments from the commission, which asserts that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have also received arguments from Ruiz Food Products Inc. ("Ruiz"). *See id.* (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have reviewed the submitted arguments and the submitted information.

Initially, we note that Ruiz seeks to withhold information that was not submitted to this office by the governor. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information

submitted as responsive by the governor. *See* Gov't Code §552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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. *Id.* § 552.101. The commission asserts that the information at issue consists of partial wage records extracted from information contained in unemployment insurance employer quarterly tax reports and other reports required to be filed by employers. The commission contends that the information at issue 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). The commission states that the information at issue contains records compiled from reports submitted to the commission for the administration of the state unemployment insurance program. Based on these representations and our review, we determine that the information at issue, which we have marked, is confidential under section 301.081 of the Labor Code. Accordingly, we conclude the governor must withhold the marked information under section 552.101 of the Government Code as

information made confidential by law.¹ The remaining information must be released to the requestor.

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).

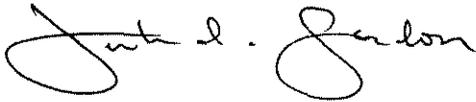
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

¹Because our determination on this issue is dispositive, we need not address the remaining arguments against disclosure.

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 "Justin D. Gordon". The signature is written in a cursive style with a large, looping initial "J".

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 276289

Enc. Submitted documents

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