



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2007

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

OR2007-06926

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# 279990. We note that you have assigned this request number 070305-019.

The Texas Workforce Commission (the "commission") received a request for unemployment insurance information pertaining to a named individual. You state that the commission will provide information responsive information pertaining to the requestor. You further state that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that some of 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.²

Initially, we must address the commission's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²We 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.

state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

In this instance you indicate that the commission received the original request for information on March 5, 2007. Accordingly, you were required to submit your request for a decision to this office no later than March 19, 2007. Further, you were required to submit the items enumerated under section 552.301(e) to us no later than March 26, 2007. However, you did not request a ruling from or submit the required documents to this office until March 30, 2007. Consequently, we find that the commission failed to comply with the procedural requirements of section 552.301 in requesting this decision from our office.

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) (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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* *Open Records Decision No. 150* at 2 (1977). Because, your claim under section 552.101 of the Government Code can provide compelling reasons to withhold information, we will address your argument under this exception

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 protected by other statutes. 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 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. We note, however, that the requestor is an attorney who represents a party to a claim.³ 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 information it has marked under section 552.101 of the Government Code in conjunction with federal 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

³ConAgra, the employer listed in the submitted records, changed its name to Swift Beef Company, which the requestor represents.

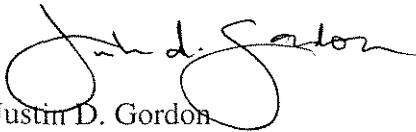
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ref: ID# 279990

Enc. Submitted documents

c: Mr. Daniel Valencia
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(w/o enclosures)