



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 10, 2007

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

OR2007-11789

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# 288683.

The Texas Workforce Commission (the "commission") received a request for seven categories of information pertaining to an investigation into or lawsuit involving a named company. You state that the commission will provide the requestor with a portion of the requested records. You also state that the commission will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the remaining 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.²

You state that a portion of the requested information is located in confidential wage records. Section 552.101 of the Government Code excepts from disclosure "information considered

¹Section 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. We note, however, that section 552.147 does not except tax identification numbers.

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.

to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 also encompasses section 301.081 of the Labor Code, which 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 or evaluating a claim for unemployment insurance benefits from a former employee. ORD 599 at 2; *see also* Labor Code § 301.001 (commission shall administer state unemployment insurance program). You state that a portion of the information at issue consists of records compiled from quarterly reports submitted to the commission for administration of the state unemployment insurance program. Based on your representations and our review, we determine that the wage record information is confidential under section 552.101 of the Government Code in conjunction with 301.081 of the Labor Code.

Further, you state that a portion of the information at issue is payday claim file information. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental

entities), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common law right to privacy). The commission asserts that the marked information constitutes personal financial information. Upon review, we determine that with the exception of the information we have marked for release, the commission must withhold the personal financial information you have marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, we note that you have marked bank account and routing number information in the records. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The commission must therefore withhold the bank account and routing number you have marked pursuant to section 552.136.

In summary, the commission must withhold the wage records you have marked under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code. The commission must further withhold the marked portions of the payday claims file information under section 552.101 of the Government Code in conjunction with common-law privacy. The marked bank account and routing information must be withheld under section 552.136 of the Government Code. The remaining information must be released.

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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/jb

Ref: ID#288683

Enc. Submitted documents

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