



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 6, 2009

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

OR2009-01590

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# 334494 (TWC Tracking No. 081114-028).

The Texas Workforce Commission (the "commission") received a request for audio and/or tape recordings relating to a wage claim. You claim that the requested information is excepted from disclosure under sections 552.101 through 552.1425 of the Government Code.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments in support of the governmental body's claimed exceptions to disclosure and (2) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A), (D). You state that the commission received the instant request for information on November 14, 2008. As of the date of this decision, you have not submitted to this office either any written comments in support of the exceptions the commission claims or any information that the commission seeks to withhold. Thus, the commission has not complied with section 552.301 of the Government Code in requesting this decision.

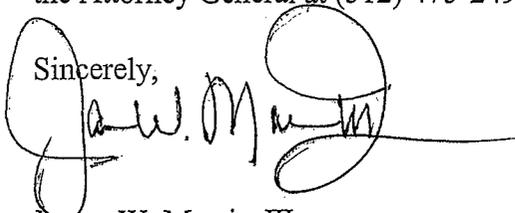
If a governmental body fails to comply with section 552.301, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold

any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The discretionary exceptions to disclosure that the commission claims are not compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). In failing to comply with section 552.301, the commission has waived its discretionary exceptions and may not withhold any of the requested information under any of those exceptions. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). The commission also claims mandatory exceptions to disclosure. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because the commission has not submitted any of the requested information to this office, we have no basis to conclude that any of the information is confidential under any mandatory exception. Thus, we have no choice but to order the commission to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 334494

c: Requestor