



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

Ms. Cynthia Villarreal-Reyna
Section Chief
Legal and Regulatory Affairs, MC 110-1A
P.O. Box 149104
Austin, Texas 78714-9104

OR2009-15635

Dear Ms. Villarreal-Reyna:

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# 360531 (TDI# 95087).

The Texas Department of Insurance (the "department") received a request for a copy of all Occupational Safety and Health Administration consultation ("OSHCON") program records involving a specified employer. You claim the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim.

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. A federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision Nos. 599 at 5 (1992), 476 at 5 (1987). Under section 670 of title 29 of the United States Code, the United States Secretary of Labor is required to conduct certain educational and training programs related to occupational health and safety. The secretary is authorized to enter into cooperative agreements with states to allow employers to consult with the states regarding occupational safety and health requirements and compliance. *See* 29 U.S.C. § 670(d)(1). Pursuant to these agreements, the state is required to "provide on-site consultation at the employer's worksite to employers who request such assistance." *Id.* § 670(d)(2). The United States Department of Labor has adopted regulations concerning the requirements of a cooperative agreement between the states and the Occupational Safety and Health Administration ("OSHA"). *See* 29 C.F.R. pt. 1908. Specifically, section 1908.6 of

the regulations covers the conduct of a visit by a state consultant to an employer's work site under the OSHCON program. The regulations require states to keep confidential "consultation program information which identifies employers who have requested the services of a consultant" because the disclosure of such information "would adversely affect the operation of the [OSHCON] program as well as breach the confidentiality of commercial information not customarily disclosed by the employer." *Id.* § 1908.6(h)(2).

You state the department participates in OSHA's federally funded onsite OSHCON program. As noted above, the request is for consultation information pertaining to a specified employer. You state release of the information would constitute a confirmation of the employer's participation in the OSHCON program. We agree. Thus, to the extent the department maintains any OSHCON program records pertaining to the specified employer, the department must withhold such information under section 552.101 in conjunction with section 1908.6(h)(2) of title 29 of the Code of Federal Regulations.¹

You also ask this office to issue a previous determination permitting the department to withhold OSHCON consultation reports and data maintained by the department under the Labor Code under section 552.101 in conjunction with subsections 1908.6(g) and (h) of title 29 of the Code of Federal Regulations, without the necessity of requesting a ruling from our office under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time. Rather, 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 records 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, toll free, at (888) 672-6787.

Sincerely,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/rl

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 360531

Enc. Submitted documents

c: Requestor
(w/o enclosures)