



December 12, 2001

Mr. Michael Jay Burns
Supervising Attorney
Information Release
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2001-5794

Dear Mr. Burns:

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# 156046.

The Texas Workforce Commission (the "commission") received a request for information, which, in pertinent part,¹ is paraphrased as follows:

- 1.) As of September 10, 2001, a report on the status of the Texas Unemployment Insurance Trust Fund (the "fund"), and any projections of the fund's status through October 2002;
- 2.) As of September 21, 2001, a copy of the fund's status; and any revised projections of the October 2002 status of the fund.

You have submitted arguments regarding what information is responsive to this request. You also assert that the submitted information, which you contend comprises the information responsive to the requests for projections, is excepted from disclosure under section 552.111 of the Government Code. The requestor has also submitted comments to this office. Gov't

¹The request was also submitted to the Office of the Comptroller of Public Accounts (the "comptroller"), and included a request for a copy of any fiscal note projections regarding the fund that the comptroller's office made on legislation involving the fund that was proposed during the 77th Legislature. You represent that the commission has no information responsive to this part of the request. The responsive information held by the comptroller apparently was released to the requestor. This decision therefore does not address any such information.

Code § 552.304. We have considered the submitted comments and arguments, the exception you claim,² and we have reviewed the submitted information.

We initially address the requestor's assertion that the commission did not timely comply with section 552.301(b) of the Government Code. This provision requires a governmental body that seeks to withhold information to request a decision from this office and state the exceptions that apply "not later than the 10th business day after the date of receiving the written request." You represent that the commission received the request at issue on September 21, 2001. The tenth business day after that date was October 5, 2001. Your initial correspondence to this office is dated October 5, 2001, and contains a postmark reflecting that date. *See* Gov't Code § 552.308(a)(1). We therefore conclude the commission timely complied with section 552.301(b).

Next, we address the submitted comments pertaining to what information is responsive to the request. You state that the commission construed the term "status" as used in the request to refer to the dollar balance contained in the fund on the dates specified. You indicate you have released these dollar balances. You also state the commission construed the term "projection" as used in the request to refer to the level of deposits in the fund relative to the minimum balance required by statute. The requestor's comments essentially assert that his request does not seek simple dollar figures. He states that a "balance is meaningless in determining the overall status or health of the fund." You respond by stating that this comment "begs the question of precisely what it is the requestor has asked for." You then claim "it is beyond [the commission's] capacity to fathom" what information the requestor seeks. We disagree.

It is well established that a governmental body has a good faith duty to relate a request to information held by it. Open Records Decision No. 561 at 8 (1990). The Act specifically provides that if "what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request." Gov't Code § 552.222(b). Communications for the purpose of clarification are, thus, clearly permissible, provided the governmental body does not "inquire into the purpose for which the information will be used." *Id.* Indeed, because the commission has greater knowledge than the requestor of what types of records it holds, the commission in performing its good faith duty should advise the requestor of the types of records that *may* be responsive. Communicating such information allows a requestor to specify the particular records he seeks. Moreover, a hyper-technical reading of particular language in a request that a governmental body believes is

²In your initial correspondence to this office, you also asserted sections 552.101 and 552.106 of the Government Code. However, because you have neither submitted comments in support of these exceptions nor marked any of the information as subject to these exceptions, we address only the section 552.111 assertion.

unclear, in lieu of communicating with a requestor for purposes of clarification, does not further the purposes or intent of the Act.

In his comments to this office subsequent to the request, contained in correspondence dated October 10, 2001, and copied to the commission, the requestor states he is seeking information as to "what impact the general economic downturn had" on the fund, "what additional affect [the commission] believed the terrorist attacks and layoffs from major Texas employers would have on the fund," and "the likelihood of unemployment tax increases for employers in 2002 and 2003 due to these factors." The commission should advise the requestor of the types of records it holds that may be responsive to this clarified request, and then the commission must either release the information the requestor advises he is seeking, or in compliance with section 552.301 of the Government Code, request a decision from this office to withhold it.³ We next address the asserted exception with regard to the information submitted to this office that, you contend, is responsive to the requests for projections.

Based on your representations and our review of the information, we find that the submitted information is subject to section 552.022(a) of the Government Code. This provision states, in pertinent part, that the following categories of information are not excepted from disclosure under the Act unless expressly confidential under other law:

(1) a complete report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(1), (5). You do not assert section 552.108. The sole exception you assert, section 552.111, is a discretionary exception⁴ under the Act and not "other law" that

³We note that whether or not the requestor's clarification, quoted above, is deemed a new request for information from the commission, the deadlines in section 552.301 have evidently expired from the date the commission received the request. Thus, pursuant to section 552.302, the responsive information "must be released unless there is a compelling reason to withhold the information." This office has found such a compelling reason only where the information is confidential - such that the governmental body is prohibited from releasing it - or where its release implicates third party interests. See, e.g., Open Records Decision No. 150 (1977); see also Gov't Code § 552.352.

⁴Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests

makes information "expressly confidential." Accordingly, we conclude the commission must release the submitted information pursuant to section 552.022(a) of the Government Code.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)); 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

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 Texas Building and Procurement Commission 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



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 156046

Enc. Submitted documents

c: Mr. R. G. Ratcliffe
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