



January 10, 2002

Mr. Michael Jay Burns  
Supervising Attorney  
Information Release  
Texas Workforce Commission  
101 E. 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2002-0169

Dear Mr. Burns:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157178.

On October 15, 2001, the Texas Workforce Commission (the "commission") received a written request for "[a]ll documents related to Utility Consultants of Houston" and certain named individuals.<sup>1</sup> You contend that portions of the requested information are excepted from public disclosure pursuant to section 552.101 of the Government Code.

As a threshold matter, we note that section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982).

Because of the broad nature of the request, you state that you sought clarification from the requestor as to the type or nature of the documents being requested. See Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). The ten-day deadline for requesting a decision from this office was tolled only during that time that the commission was awaiting a response to its clarification request. See Open

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<sup>1</sup>You have also submitted to this office another request from the same requestor for records pertaining to Distributed Computing Specialists, Inc. and certain named individuals. Because you have not submitted to this office any records responsive to this request, we do not address that records request in this ruling.

Records Decision No. 663 at 5 (1999). The commission received the requestor's clarification on October 17, 2001; consequently, the ten day period resumed on October 18. You submitted your request for a decision from this office on October 30; accordingly, we conclude that you timely requested a decision from this office pursuant to section 552.301 of the Government Code.

We now address the extent to which the submitted information comes under the protection of section 552.101 of the Government Code. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You state that in your good faith effort to relate records held by the commission to the records request, you identified the submitted records, which "consist primarily of records of a claim made under the Texas 'pay day' law, referred to as a 'Rule 13' procedure." You contend that the "personal financial information" contained in the claim file must be withheld from the public pursuant to section 552.101 in conjunction with the common-law right of privacy.

In Open Records Decision No. 619 (1993), this office concluded that section 402.083(a) of the Labor Code makes confidential only information in or derived from a claim file that explicitly or implicitly discloses the identity of the claimant. The types of claimant identifying information made confidential under section 402.083(a) include the claimant's name, identity of family members, social security number, home telephone number, home address, and date of birth. ORD 619 at 10. After reviewing the submitted documents, we conclude that in addition to those categories of information, the commission must also withhold pursuant to section 402.083(a) the copy of the claimant's driver's license and the claimant's driver's license number.<sup>2</sup> However, because the redaction of these categories of information will sufficiently protect the privacy interests of the claimant, we conclude that the "personal financial information" contained in the records at issue must be released.

The claim file also contains bank account numbers. Please note that the Seventy-seventh Legislature passed Senate Bill 694, signed by the Governor and effective May 26, 2001, which added a new section 552.136 of the Government Code.<sup>3</sup> This newly enacted exception makes certain account numbers confidential. It provides in relevant part:

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<sup>2</sup>Because we resolve this aspect of your request under section 552.101, we need not address the applicability of section 552.130 of the Government Code to this information.

<sup>3</sup>The Legislature also enacted two other bills that add a section 552.136 to chapter 552. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code.

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Session Law Serv. 614 (Vernon) (to be codified at Gov't Code § 552.136). We conclude that the commission must withhold the bank account numbers contained in the claim file pursuant to section 552.136 of the Government Code. The remaining information you submitted to this office must be released to the requestor, except as discussed above.

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).

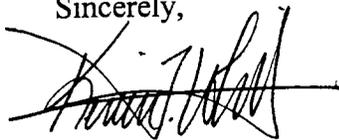
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

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,



Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/RWP/sdk

Ref: ID# 157178

Enc: Submitted documents

c: Ms. Jennifer Piskun  
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(w/o enclosures)