



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2003

Ms. Alice Caruso
Assistant Disclosure Officer
Information Release
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2003-6422

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187984.

The Texas Workforce Commission (the "commission") received a written request for all documents "relating to any charges which [a named individual] may have filed against any employer within the last fifteen (15) years." You state that most of the responsive information will be released to the requestor. You contend, however, that the two documents you submitted to this office are excepted from required disclosure pursuant to sections 552.101 and 552.107(1) of the Government Code.

After reviewing the submitted documents, however, we conclude that these documents pertain to someone other than the individual named in the records request and therefore are not responsive to the request. Consequently, we do not address the extent to which the submitted documents are subject to required public disclosure at this time.

We therefore conclude that you have not submitted to this office any information that is responsive to the request. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(e)(1)(D), "[a] governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information] . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]" Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

Because you have not submitted to this office any information held by the commission that is responsive to the request, we conclude that you have failed to comply with section 552.301 with respect to the requested information. Therefore, this information is presumed to be public and must be released, to the extent it exists, unless there is a compelling reason to withhold the information from the public. Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). Although you contend that the information at issue is excepted from public disclosure pursuant to section 552.107(1) of the Government Code, section 552.107(1) is a discretionary exception under the Public Information Act (the "Act") and does not constitute a compelling reason sufficient to overcome the presumption of openness. See Open Records Decision Nos. 630 (1994) (section 552.107 is discretionary exception); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Furthermore, although you contend the information at issue is excepted from public disclosure under section 552.101 of the Government Code, which protects "information considered to be confidential by law," without a copy of the requested information, this office has no basis on which to conclude that the requested information is confidential for purposes of that exception. Consequently, we have no choice but to conclude that the information at issue is public under section 552.302 and therefore must be released to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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

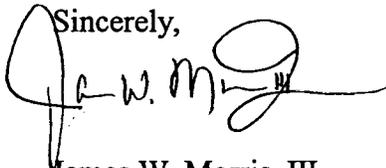
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/RWP/seg

Ref: ID# 187984

Enc: Submitted documents

c: Ms. Benita F. Harper
Karger Key Barnes & Lynn, P.C.
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(w/o enclosures)