ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2004

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

OR2004-7371

Dear Ms. Kaiser:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210745.

The Texas Workforce Commission ("TWC") received a request for all documents regarding a specific unemployment benefits claim. You indicate that TWC will release some of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1]

Initially, we note that pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. TWC received the present request for information on July 27, 2004. TWC did not submit a

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

representative sample of the specific information requested until August 18, 2004. Consequently, TWC failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Generally, section 552.107(1) does not constitute a compelling reason to overcome the presumption of openness. Open Records Decision No. 630 (1994). However, the applicability of section 552.101 is such a compelling reason.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information protected from disclosure by other statutes. The regulations found at section 603 of title 20 of the Code of Federal Regulations send a clear message that "claim information" in the files of a state unemployment compensation agency is to be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies, such as TWC, must protect the confidentiality of claim information. "Claim information" means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as "[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits." 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of "claim information" and that the federal regulations prohibit TWC from disclosing this information. *See* Open Records Decision No. 476 at 4 (1987).

You also argue that the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the "department") in administering state Unemployment Insurance programs and that a department directive, (UI Program Letter No. 34-97) specifies the conditions under which such claim information may be released. You do not indicate, nor does it appear, that any of the release provisions specified in that directive are applicable in this instance. Based on our review of your arguments and the

information at issue, we agree that the submitted information is made confidential under federal law. Accordingly, we conclude that TWC must withhold from disclosure the entirety of the information at issue pursuant to section 552.101 of the Government Code, unless otherwise authorized to release the information under part 603 of title 20 of the Code of Federal Regulations or UI Program Letter 34-97.

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).

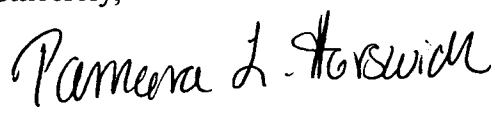
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 210745

Enc. Submitted documents

c: Ms. Angella H. Myers
Gerard, Singer, Levick & Busch, P.C.
16200 Addison Road, Suite 140
Addison, Texas 75001
(w/o enclosures)