



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2004

Ms. Margo M. Kaiser
Open Records
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2004-9458

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# 212742.

The Texas Workforce Commission ("TWC") received a request from the claimant's attorney for all records pertaining to the claimant's application for benefits. You state that you will release some information to the requestor. However, you claim that the submitted 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.

Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, 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 May 18, 2004. TWC did not request a decision from this office or submit the required information until September 9, 2004. Consequently, TWC failed to comply with section 552.301(b) and 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). 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)*.

TWC also argues 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. UI Program Letter No. 34-97 provides in relevant part:

Exceptions: Following are exceptions to the rule of confidentiality.

....

c. Disclosure to Private Entities - UIPL 23-96 [May 31, 1996]. UC Information may be disclosed to a private entity under a written agreement which requires "informed consent" from the individual to whom the information pertains, safeguards the information once it is in the hands of the private entity and closely restricts or prohibits further dissemination, and requires the private entity to pay all costs associated with disclosure. Consent is not informed if an individual is not told that governmental records, including a State's records, may be released and to whom the information may be provided. . . .

UI Program Letter No. 34-97 at 3-4 (June 10, 1997).

TWC indicates it released some unemployment claim information to the requestor pursuant to UI Program Letter Nos. 34-97 and 23-96. The submitted Case Analysis is claim information as defined by federal regulation. *See* 20 C.F.R. § 603.2(c)(1), (5). Thus, it is confidential under section 603.7 of title 20 of the Code of Federal Regulations and UI Program Letter No. 34-97. However, we note that TWC has the discretion to release the Case Analysis to the claimant's attorney pursuant to UI Program Letter Nos. 34-97 and 23-96.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 212742

Enc: Submitted documents

c: Ms. Holly Polson
Law Offices of Heygood, Orr & Reyes, L.L.P.
909 Lake Carolyn Parkway, 17th Floor
Irving, Texas 75039
(w/o enclosures)