



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 13, 2005

Ms. Margo Kaiser  
Assistant General Counsel  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2005-08326

Dear Ms. Kaiser:

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# 232083.

The Texas Workforce Commission (the "commission") received a request for the total numbers of former employees of the Texas Lottery Commission (the "TLC") (1) who have applied in the past three years for unemployment benefits from the commission, (2) who have been granted unemployment benefits in the past three years, and (3) who were refused unemployment benefits in the past three years. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Part 603 of title 20 of the Code of Federal Regulations generally makes confidential "claim information" from a state unemployment compensation agency. *See* 20 C.F.R. § 603.7(a). Section 603.2 defines "claim information" as the following:

- (1) Whether an individual is receiving, has received or has applied for unemployment compensation;

- (2) The amount of compensation the individual is receiving or is entitled to receive;
- (3) The individual's current (or most recent) home address; and
- (4) Whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay.
- (5) Any other information contained in the records of the State unemployment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.

*Id.* § 603.2(c). This office has previously concluded that the regulations found at part 603 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 id.* § 603.7; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7, state unemployment compensation agencies, such as the commission, must protect the confidentiality of claim information. In addition, 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 (“UI”) programs, and a department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. Thus, unless otherwise authorized to release claim information under part 603 or UI Program Letter No. 34-97, the commission must withhold claim information in its entirety from a requestor under the Act. *See* 20 C.F.R. pt. 603; UI Program Letter 34-97 (allowing disclosure to private entity under a written agreement that requires informed consent from the individual to whom the information pertains).

In this instance, the submitted information relates to the total numbers of TLC employees who have applied for, who have been granted, and who have been refused unemployment benefits in the past three years. We note that the information in question does not reveal any of the following: (1) whether a particular individual is receiving, has received, or has applied for unemployment compensation; (2) the amount of compensation the individual is receiving or is entitled to receive; (3) the individual's current (or most recent) home address; or (4) whether the individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay. *See* 20 C.F.R. § 603.2(c)(1)-(4). We also find the commission has failed to establish that the information at issue is needed by a requesting agency to verify eligibility for, and the amount of, benefits. *See id.* § 603.2(c)(5). We note that the name of an employer constitutes claim information for purposes of section 603.2 only if its release would reveal the identity of an employee who is receiving, has received, or has applied for unemployment compensation. *See generally* Open Records Decision No. 476 at 5-6. We therefore conclude that the commission has not established that the submitted information constitutes “claim information” for purposes of section 603.2. *See*

20 C.F.R. § 603.2(c). Consequently, the information in question is not confidential under federal law, and the commission may not withhold any of the submitted information on that basis under section 552.101 of the Government Code.

Section 552.101 also encompasses section 301.081 of the Labor Code, which provides the following:

(a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

(c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

(d) A person commits an offense if the person is an employee or member of the commission who violates any provision of this section. An offense under this subsection is punishable by a fine of not less than \$20 nor more than \$200, confinement in jail for not more than 90 days, or both fine and confinement.

Labor Code § 301.081. This office has previously concluded that the term “employment information,” for purposes of section 301.081(c), refers to the information obtained from the employers’ records and from the reports that employers are required to file with the commission. *See* Open Records Decision No. 599 at 2 (1992) (construing former V.T.C.S. art. 5221b-9). This includes information the commission requires employers to submit for purposes of determining an employer’s tax liability or evaluating a claim for unemployment insurance benefits from a former employee. *Id.*; *see also* Labor Code § 301.001 (commission must administer state unemployment insurance program).

Having considered your arguments, we find you have not established that, for purposes of section 301.081 of the Labor Code, the submitted information consists of employment information obtained from the employers’ records or from reports that employers are required to file with the commission. *See* Labor Code § 301.081(c). We therefore conclude that the information in question is not confidential under section 301.081, and the commission may not withhold any of the submitted information on that basis under section

552.101 of the Government Code. As you claim no other exception to disclosure, the commission must release the submitted information to the requestor.

You also ask this office to issue a previous determination that would permit the commission to withhold unemployment insurance claims records without the necessity of again requesting an attorney general decision under the Act. We decline to issue such a decision at this time. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001).

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).

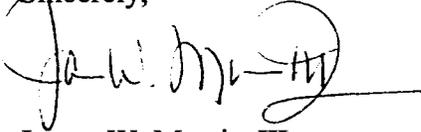
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 232083

Enc: Submitted documents

c: Ms. Lisa Falkenberg  
Houston Chronicle  
801 Texas Avenue  
Houston, Texas 77002  
(w/o enclosures)