



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 6, 2006

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

OR2006-02199

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# 243789.

The Texas Workforce Commission (the "commission") received a request for a "certified copy of any and all records and tapes maintained by the [commission]" relating to a named individual. You state that you will release some of the requested information to the requestor, but claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the commission's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). You state that the commission received the request for information on December 14, 2005. Based on this date, the tenth business day following the commission's receipt of the written request was December 29, 2005.² The commission, however, did not submit its request for a decision

¹We 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.

² The commission informs us that its office was closed on December 26, 2005.

from this office until December 30, 2005. Consequently, the commission failed to comply with section 552.301 of the Government Code in requesting this decision.

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). The applicability of section 552.101 is such a compelling reason.

The commission notes that this office issued a previous determination in Open Records Letter No. 2004-3081 (2004) that authorizes the commission to withhold all employer quarterly reports under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). You claim that the requested wage record information is "extracted from [unemployment insurance] employer quarterly reports" and therefore subject to Open Records Letter No. 2004-3081. However, Open Records Letter No. 2004-3081 states "this ruling will serve as a previous determination that quarterly tax reports required to be filed by employers for Unemployment Insurance tax purposes are not subject to disclosure under the Act, pursuant to section 552.101 of the Act and section 301.081 of the Labor Code." Upon review, we find that the submitted information does not include an employer's quarterly tax reports. Therefore, Open Records Letter No. 2004-3081 is not applicable to the information at issue in this instance. We will, therefore, consider your arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You state that the submitted unemployment insurance claims record information constitutes claim information filed by an individual other than the requestor. 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 the commission, 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 the commission from disclosing this information. *See* Open Records Decision No. 476 at 4 (1987).

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. You state that "the requester does not fall into any of the exceptions to the confidentiality requirements imposed by federal and state laws and regulations." Therefore, the commission must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with these federal provisions. *See* UI Program Letter 34-97 (allowing disclosure to "private entity under a written agreement which requires 'informed consent' from the individual to whom the information pertains"); *see also* 20 C.F.R. § 603.

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

(a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of [title 4 of the Labor Code.] 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.

Labor Code § 301.081(a)-(c). In Open Records Decision No. 599 (1992), we concluded that the "employment information" addressed in section 301.081(c) refers to information obtained from employers' records and from reports that employers are required to file with the

commission. 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. Open Records Decision No. 599 at 2 (1992) (predecessor statute); *see also* Labor Code § 301.001 (commission shall administer state unemployment insurance program). However, information that the commission creates and assigns to an employer is not confidential under section 301.081 because it was not obtained from the employer's records. Open Records Decision 559 at 5.

You state that the submitted wage record information was compiled from quarterly unemployment tax reports submitted to the commission for the purpose of administering the state Unemployment Insurance program. After reviewing your arguments and the submitted information, we agree that the submitted wage record information is confidential under section 301.081 of the Labor Code. *See* Labor Code § 301.081(a). Therefore, the commission must withhold the information we have marked under section 552.101 in conjunction with section 301.081 of the Labor Code.

In summary, the commission must withhold the claim information we have marked under section 552.101 of the Government Code in conjunction with federal law. The remaining submitted information, which we have marked, is confidential under section 301.081 of the Labor Code and must be withheld under section 552.101.

You also ask this office to issue a previous determination permitting the commission to withhold "unemployment insurance claims and tax records" without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segh

Ref: ID# 243789

Enc: Submitted documents

c: Ms. Heidi H. Moseley
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