



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2006

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

OR2006-05279

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# 249606.

The Texas Workforce Commission (the "commission") received a request for a social security number and/or a federal employer identification number ("FEIN"). You claim that the requested information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. You also assert that the FEIN is not responsive to this request for information. We have considered your arguments and have reviewed the information you submitted.¹

Initially, we address your representation that the FEIN is not responsive to this request for information because it is not contained in the type of commission file to which the request refers. We note, however, that a governmental body that receives a request for information must make a good-faith effort to relate the request to information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). As you have identified and submitted the FEIN to which the requestor appears to seek access, we will address its public availability.

¹Because the social security number and FEIN are the only information to which the requestor seeks access, this decision does not address the public availability of the rest of the submitted information.

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 another statute makes confidential. You raise section 552.101 in conjunction with 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. ORD 599 at 1. You state that the submitted FEIN was derived from employer quarterly reports submitted to the commission for the purpose of administering the state unemployment insurance program. Based on your representations, we conclude that the commission must withhold the FEIN under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.² The commission must withhold the submitted social security number under section 552.147.

In summary: (1) the commission must withhold the FEIN under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code; and (2) the commission must withhold the social security number under section 552.147.

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).

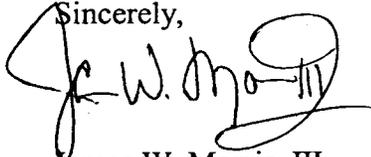
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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 "J. W. Morris, III". The signature is stylized with a large, looping initial "J" and a long, sweeping underline.

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

JWM/sdk

Ref: ID# 249606

Enc: Submitted documents

c: Ms. Bernadette Martin
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801 Congress Avenue, Suite 250
Houston, Texas 77002
(w/o enclosures)