



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 7, 2007

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

OR2007-01599

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#270816.

The Texas Workforce Commission (the "commission") received a request for "all documents in [the commission's] file" and 10 categories of information pertaining to a named company over a particular period of time. You state that most of the responsive information will be released upon payment of estimated costs. We note that you have redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> However, you claim that the submitted 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.<sup>2</sup>

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<sup>1</sup>We 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.

<sup>2</sup>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.

You seek to withhold portions of the submitted information pursuant to section 552.101 of the Government Code in conjunction with federal regulations. This office has stated that “[a] federal statute or administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of [the predecessor to section 552.101] of the Open Records Act.” Open Records Decision No. 476 at 5 (citing Open Records Decision Nos. 373 (1983); 226 (1979); *Johnson v. Wells*, 566 F.2d 1016 (5th Cir. 1978)). You argue that the federal Wagner-Peyser Act requires states to comply with the directives of the United States Department of Labor (the “department”) in administering state public employment services funded by the department. *See* 29 U.S.C. § 49 *et. seq.*

Pursuant to section 307.001 of the Texas Labor Code, the commission has adopted the duties associated with implementing employment services regulated by the Wagner-Peyser Act. Section 307.001 of the Labor Code provides the following:

The commission is the agency of this state designated to cooperate with the United States Employment Service as necessary to perform the duties of this state under the Wagner-Peyser Act (29 USC Section 49 *et seq.*) and is required to establish and maintain free public employment offices.

Labor Code § 307.001. Section 658.410 of title 20 of Code of Federal Regulations provides in relevant part:

(a) Each State agency shall establish and maintain a Job Service complaint system pursuant to this subpart.

(b) The State Administrator shall have overall responsibility for the operation of the State agency JS complaint system. At the local office level, the local office manager shall be responsible for the management of the JS complaint system.

20 C.F.R § 658.410. The commission states that as the state level administrator of this program, the commission is required to establish and operate a job service complaint system. Section 658.413 of title 20 of the Code of Federal Regulations governs this system and provides in relevant part the following:

(b) Whenever an individual indicates an interest in making any complaint to a State agency office, the appropriate JS official shall offer to explain the operation of the JS complaint system. The appropriate JS official shall offer to take the complaint in writing if it is JS related, or if non-JS related, it alleges violations of employment related laws enforced by ESA or OSHA and is filed by or on behalf of a [migrant and seasonal farmworker]. . . The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint shall be kept

confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint.

20 C.F.R § 658.413. You inform us that portions of the submitted information reveal “the identities of complainants and witnesses in a job service complaint and investigation.” Based on your representations and our review of the information at issue, we conclude that the commission must withhold the information it has marked pursuant to section 552.101 in conjunction with federal law. We have marked additional information that must be withheld under section 552.101 of the Government Code. The remaining information must be released to the requestor.

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,



Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/krl

Ref: ID# 270816

Enc. Submitted documents

c: Ms. Lakshmi Ramakrishnan  
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(w/o enclosures)