



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2007

Mr. Charles K. Eldred  
Attorney for Public Information  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765

OR2007-13459

Dear Mr. Eldred:

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# 291770.

The Texas Youth Commission ("TYC") received a request for information pertaining to a former employee. You state that you will provide the requestor with a portion of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the TYC's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). TYC received the request for information on July 25, 2007, and we

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<sup>1</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.

received your request for a decision from this office on August 9, 2007 via interagency mail. There is no postmark on the interagency mail, and we are otherwise unable to determine that TYC mailed its request for a decision before August 9, 2007. *See* Gov't Code § 552.308 (describing rules to calculate submission dates of documents sent via interagency mail). Consequently, we find that TYC has failed to establish that it requested a decision within the ten-business-day period as mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires TYC to withhold the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected from disclosure by other statutes. This office has stated that the regulations found at part 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 must protect the confidentiality of claim information. The confidentiality provision of section 603.7 applies to "state unemployment compensation agencies" and "requesting agencies." *See* 20 C.F.R. §§ 603.7, 603.2. You do not demonstrate how this provision is applicable to TYC. Thus, the submitted information may not be withheld under section 552.101 in conjunction with section 603.7 of title 20 of the Code of Federal Regulations.

You argue 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 ("UI") programs and that a department directive, (UI Program Letter No. 34-97) specifies the conditions under which claim information may be released. We note that this UI Program Letter applies to state unemployment compensation agencies and the entire executive branch of State government. However, you have failed to demonstrate that this UI Program Letter is applicable to TYC. Thus, the submitted information may not be withheld under UI Program Letter 34-97.

We note that the submitted information contains a social security number. 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. Therefore, TYC may withhold the social security number under section 552.147 of the Government Code.<sup>2</sup>

In summary, TYC may withhold the social security number under section 552.147 of the Government Code. The remaining submitted 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

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<sup>2</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.

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 that reads "Henisha D. Anderson". The signature is fluid and cursive, with the first name being the most prominent.

Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/jb

Ref: ID# 291770

Enc. Submitted documents

c: Ms. Connie Hansen  
c/o Mr. Charles K. Eldred  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765  
(w/o enclosures)