ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2011

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

OR2011-12222

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# 426559 (TWC Tracking No. 110523-009).

The Texas Workforce Commission (the "commission") received a request for the names of the companies or government agencies that employed participants in the project for the reintegration of offenders ("Project RIO") during a specified time period. You state you will redact e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).[1] You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[2]

Initially, we note some of the submitted information, which we have marked, is not responsive because it does not consist of the requested names. This ruling does not address the public availability of non-responsive information, and the commission is not required to release non-responsive information in response to this request.

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[1]Open Records Decision No. 684 authorizes all governmental bodies to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

[2]We assume that the "representative sample" of information 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.

Next, we must address the commission's procedural obligations under the Act. Because this office needed additional information regarding whether the submitted information was received from the Texas Youth Commission under the data interface established under subsection 306.008(a) of the Labor Code, this office requested by correspondence sent to you by facsimile on July 26, 2011 that the commission provide such information. *See* Gov't Code § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). The July 26, 2011 correspondence informed you the commission had seven calendar days to submit to this office the additional information requested. *See id.* § 552.303(d) (governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date notice is received). As of the date of this letter, we have not received a response from the commission. Because the commission did not respond to our letter, we find the commission failed to comply with section 552.303(d).

Pursuant to section 552.303(e) of the Government Code, a governmental body's failure to comply with the requirements of section 552.303(d) results in the legal presumption that the requested information is subject to required public disclosure and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.303(e); 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 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will consider the applicability of this section to the submitted information.

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, such as section 306.008 of the Labor Code. Chapter 306 of the Labor Code establishes Project RIO, a statewide employment referral program designed to reintegrate into the labor force persons sentenced to the Texas Department of Criminal Justice (the "department") or committed to the Texas Youth Commission. *See* Labor Code § 306.002. Section 306.008 of the Labor Code provides:

> (a) To assist in the reintegration into the labor force of persons formerly sentenced to the correctional institutions division [of the department] or committed to the Texas Youth Commission, the commission, the Texas Youth Commission, and the department shall establish a data interface that, at a minimum, provides to the commission:
>
> > (1) detailed information about persons released from a correctional facility who might benefit from post-release Project RIO services, including:
> >
> > > (A) demographic and identifying information;

(B) the person's address on release;

(C) a comprehensive state offense history, including the date of release from the correctional facility, sentence discharge date, and conditions of parole;

(D) assessment information;

(E) educational and work history;

(F) information related to participation in the work against recidivism program operated by the department's manufacturing and logistics division under the Texas Correctional Industries office; and

(G) other services provided under this title before release from the correctional facility; and

(2) referral information from the department and the Texas Youth Commission necessary to implement the provision of post-release employment services.

(b) The data interface established under Subsection (a) must be designed to provide to a person's supervising officer on release information about the person's participation in employment services and entry into the workforce.

(c) Information received from the Texas Youth Commission under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

Id. § 306.008(a)-(c). You state information obtained from the Texas Youth Commission regarding adjudicated youths and the names of employers hiring them is clearly confidential under section 306.008(c) of the Labor Code. We note the responsive information consists of a list of employers. Because the commission did not respond to our request for additional information concerning whether the Texas Youth Commission provided the list to the commission, we find you have failed to establish the information at issue was received from the Texas Youth Commission under the data interface established under subsection 306.008(a) of the Labor Code. *See* Gov't Code § 552.303(c)-(e) (providing that a governmental body's failure to timely submit additional information upon the attorney general's written notice that additional information is necessary to render a decision results in the legal presumption that the requested information is subject to required public disclosure and must be released). Thus, no portion of the information at issue may be withheld under section 552.101 of the Government Code on this basis.

Next, you claim the information at issue is confidential pursuant to section 552.101 of the Government Code in conjunction with section 847.3 of title 40 of the Administrative Code,

which pertains to Project RIO employment activities and support services. *See id.* § 301.0015(a)(6) (commission shall adopt rules necessary for the administration of Project RIO). This section provides in relevant part:

> (h) Youth Confidentiality. All information regarding the adjudicated status of a youth shall be held in strict confidence and shall not be disclosed to any other entity or person. A Board [of the commission] shall ensure that employment referrals for adjudicated youth are made in accordance with the confidentiality requirements set forth in state statutes, state rules, and [c]ommission policies.

See 40 T.A.C. § 847.3(h). Upon review, the information at issue does not pertain to the adjudicated status of a youth. Thus, no portion of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 847.3 of title 40 of the Administrative Code.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential according to prior decisions of this office. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, . . . tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find you have failed to demonstrate the information at issue falls within the definition of "return information" under section 6103(b)(2). Therefore, none of the responsive information is confidential under section 6103(a), and the commission may not withhold the information under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual's criminal history record information is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private

citizen's criminal history is generally not of legitimate concern to the public. You argue disclosure of the information at issue "when combined with lists of new employees would necessarily result in the disclosure of the past incarceration of the employees." We note the Act does not allow information to be withheld from a requestor based on deductions that can be made from the released information that could reveal otherwise confidential information. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995). Upon review, we find this request does not seek a compilation of an individual's criminal history; rather, the request is for names of employers. Such a request does not implicate an individual's common-law right of privacy. Accordingly, the commission may not withhold the information at issue as a criminal history compilation under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the commission must release the requested responsive information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 426559

Enc. Submitted documents

c: Requestor
(w/o enclosures)