



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2012

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

OR2012-00973

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# 442852 (TWC Tracking No. 111011-013).

The Texas Workforce Commission (the "commission") received a request for nine categories of information related to a specified entity. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).¹ You state a portion of the submitted information is not subject to the Act. Additionally, you claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, you note Exhibit B consists of job matching services information. Section 301.085 of the Labor Code provides in part that "job matching services information [is] not public information for purposes of [the Act]." Labor Code § 301.085(c). Accordingly, we find that

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²We 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.

the job matching services information in Exhibit B is not subject to the Act. Therefore, this ruling does not address the public availability of those records, and they need not be released in response to this request for information.³

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You seek to withhold portions of the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 658.413 of title 20 of the Code of 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 state 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.*

You further inform our office that 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.*) 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 [“JS”] 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.

³As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

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 assert portions of the submitted information reveal the identities of complainants 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 we have marked pursuant to section 552.101 of the Government Code in conjunction section 658.413 of title 20 of the Code of Federal Regulations.⁴

Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the commission may not withhold any of the remaining information on that basis.

In summary, Exhibit B is not subject to the Act and need not be released in response to this request for information. The commission must withhold the identifying information we have marked under section 552.101 of the Government Code and section 658.413 of title 20 of the Code of Federal Regulations. The remaining information must be released.

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.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read 'Vanessa Burgess', followed by a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 442852

Enc. Submitted documents

c: Requestor
(w/o enclosures)