



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2006

Ms. Lona Chastain
Open Records Coordinator
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778

OR2006-01416

Dear Ms. Chastain:

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# 242276.

The Texas Workforce Commission (the "commission") received a request for information pertaining to personnel evaluations, discipline, promotions, demotions, reclassifications, as well as any cause determinations recommended by the United States Equal Employment Opportunity Commission (the "EEOC") or a similar agency or court against the Texas Commission on Human Rights/Texas Workforce Commission Civil Rights Division over specified periods. You state that you have released some of the requested information but claim that the submitted cause determinations are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

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. This section encompasses information protected by other statutes. Specifically, you raise section 2000e-5 of Title 42 of the United States Code, which provides, in part:

¹We note that the information you have submitted as Exhibit B is not responsive to the request. You state that Exhibit B has been submitted for informational purposes only. We do not address in this ruling the applicability of the Act to this information.

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the [EEOC], alleging that an employer . . . has engaged in an unlawful employment practice, the [EEOC] shall serve a notice of the charge . . . and shall make an investigation thereof. . . . Charges shall not be made public by the [EEOC]. . . . Nothing said or done during and as a part of such informal endeavors may be made public by the [EEOC].

42 U.S.C. § 2000e-5(b). Section 1610.17 of title 29 of the Code of Federal Regulations states in part:

Section 706(b) of title VII provides that the [EEOC] shall not make public charges which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the [EEOC]'s endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the [EEOC] without the written consent of the parties concerned; nor may it be used as evidence in any subsequent proceeding. Any officer or employee of the [EEOC] who shall make public in any manner whatever any information in violation of section 706(b) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

29 C.F.R. § 1610.17(b). You state that “[t]he [commission] handled discrimination complaint resolution filed with [the commission] under Texas Labor Code Chapter 21 pursuant to a work share agreement with the [EEOC]” and that “[t]he terms of the work share agreement require [the commission] to comply with the requirements of the [EEOC], including 29 CFR 1610.17(b) relating to honoring conciliation agreement confidentiality.” You assert the submitted cause determinations are the subject matter of a conciliation agreement that is made confidential under this federal statutory and regulatory scheme.

However, we have previously held that “[section 2000e-5(b)] only restricts disclosure by those enforcing the Equal Employment Opportunity Act.” *See* Open Records Decision Nos. 245 (1980), 155 (1977), 59 (1974); *Whitaker v. Carney*, 778 F2d 216 (1985), *cert denied*, 479 U.S. 813 (1986) (Title VII proscribes release of information only when held by EEOC or EEOC employees not when held by employer). In this case, the commission is the employer and is not acting as the agent of the EEOC. No federal statute or regulation prevents an employer’s disclosure of information relating to a claim of employment discrimination. *See* Open Records Decision No. 132 (1976). Therefore, in the hands of the commission, as an employer, the submitted cause determinations are not made confidential by federal law.

We turn next to the commission's claim under section 552.101 in conjunction with section 21.060 of the Labor Code. Section 21.060 states "[a] party to a conciliation agreement made under this chapter commits an unlawful employment practice if the party violates the terms of a conciliation agreement." Labor Code § 21.060. The commission states that the submitted information is subject to a conciliation agreement made under chapter 21 of the Labor Code. In addition, the commission states and provides documentation demonstrating that under the terms of the conciliation agreement, the commission and the complainant agreed that "neither party will divulge or discuss this Agreement, the contents of the Agreement, or the subject matter, thereof to or with anyone other than among Parties, Parties' attorneys or representatives and those agency personnel who reasonably need to know." However, this office has long held that a governmental body's promise to keep confidential information that is subject to the Act is not a basis for withholding the information from the public, unless the governmental body has specific statutory authority to keep the information confidential. Open Records Decision Nos. 514 (1988), 479 (1987), 444 (1986). We conclude that section 21.060 does not give such authority to the commission. Therefore, the submitted information may not be withheld on this basis.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information that tends to identify a victim of sexual harassment is protected under common law privacy. See Open Records Decision No. 339 (1982); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Thus, the commission must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common law privacy.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5; see *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). After review of the information at issue, we find that it does not contain information that is confidential under constitutional privacy; therefore, the commission may not withhold it under section 552.101 on that ground.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy. 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 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 cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 242276

Enc. Submitted documents

c: Mr. Y. Sirker
P.O. Box 200545
Austin, Texas 78720-0545
(w/o enclosures)