ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2006

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

OR2006-05059

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# 249148.

The Texas Workforce Commission (the "commission") received a request for an entire commission complaint file. You state that you have released some of the requested information but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 2000e-5(b) of title 42 of the United States Code states in relevant part:

> Whenever a charge is filed by or on behalf of a person claiming to be aggrieved . . . alleging that an employer . . . has engaged in an unlawful employment practice, the [Equal Employment Opportunity Commission (the "EEOC")] shall serve a notice of the charge . . . on such employer . . ., and shall make an investigation thereof. . . . Charges shall not be made public by the [EEOC]."

42 U.S.C. § 2000e-5(b). The EEOC is authorized by statute to utilize the services of state fair employment practices agencies to assist in meeting its statutory mandate to enforce laws prohibiting discrimination. *See id.* § 2000e-4(g)(1). You state that the commission "investigates complaints alleging discrimination filed with the [commission] under a written agreement with the [EEOC]." Pursuant to section 21.204 of the Labor Code, the commission

may investigate a complaint of an unlawful employment practice. *See* Lab. Code § 21.204; *see also id.* §§ 21.0015 (powers of Commission on Human Rights under Labor Code chapter 21 transferred to commission's civil rights division), 21.201. Section 21.304 of the Labor Code provides that "[a]n officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter." *Id.* § 21.304.

You state that the submitted information pertains to complaints of unlawful employment practices investigated by the commission under section 21.204 and on behalf of the EEOC. We therefore agree that the submitted information is generally confidential under section 21.304 of the Labor Code. In this instance, however, the requestor is an attorney representing a party to the complaint. Section 21.305 of the Labor Code concerns the release of commission records to a party of a complaint filed under section 21.201 and provides:

> (a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.
>
> (b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:
>
> > (1) after the final action of the commission; or
> >
> > (2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

Id. § 21.305. At section 819.92 of title 40 of the Texas Administrative Code, the commission has adopted rules that govern access to its records by a party to a complaint. Section 819.92 provides:

> Pursuant to Texas Labor Code § 21.304 and § 21.305, [the commission] shall, on written request of a party to a perfected complaint under Texas Labor Code, § 21.201, allow the party access to the [commission's] records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:
>
> > (1) following the final action of the [commission]; or
> >
> > (2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

40 T.A.C. § 819.92. You indicate that the commission has dismissed the complaint at issue. Thus, the requestor would have a right of access pursuant to sections 21.305 and 819.92. This office has long held that information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). You contend, however, that "[a]n exception to the general rule of release to a party exists for confidential internal agency memoranda," and seek to withhold the submitted information under section 552.111. In support of your contention, you claim that a federal court recognized a similar exception by finding that "the EEOC could withhold an investigator's memorandum as predecisional under [the Freedom of Information Act (the "FOIA")] as part of the deliberative process" in " *Mace v. EEO*, 374 F. Supp 1144 (E.D.Mo. 1999)." We note that this case is correctly cited as *Mace v. U.S. EEOC*, 37 F. Supp.2d 1144 (E.D. Mo. 1999). In *Mace*, however, there was no access provision analogous to sections 21.305 and 819.92 at issue. The court did not have to decide whether the EEOC may withhold the document under section 552(b)(5) of title 5 of the United States Code despite the applicability of an access provision. We therefore conclude that the present case is distinguishable from the court's decision in *Mace*. Furthermore, in Open Records Decision No. 534 (1989), this office examined whether the statutory predecessor to section 21.304 of the Labor Code protected from disclosure the Commission on Human Rights' investigative files into discrimination charges filed with the EEOC. We stated that while the statutory predecessor to section 21.304 of the Labor Code made all information collected or created by the Commission on Human Rights during its investigation of a complaint confidential, "[t]his does not mean, however, that the commission is authorized to withhold the information from the parties subject to the investigation." *See* Open Records Decision No. 534 at 7 (1989). Therefore, we concluded that the release provision grants a special right of access to a party to a complaint. Thus, because access to the commission's records created under section 21.201 is governed by sections 21.305 and 819.92, we determine the submitted information may not be withheld by the commission under section 552.101 or section 552.111. As you raise no further exceptions to disclosure, the submitted information must be released.

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).

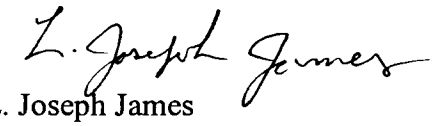
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 249148

Enc. Submitted documents

c: Mr. Peter K. Rusek
Sheehy, Lovelace & Mayfield, P.C.
510 North Valley Mills Drive, Suite 500
Waco, Texas 76710
(w/o enclosures)