ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2006

Ms. Margo M. Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street, Room 266
Austin, Texas 78778

OR2006-13187

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# 263883.

The Texas Workforce Commission (the "commission") received a request for information pertaining to a specified discrimination charge. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.[1] We have also received and considered comments submitted the requestors. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that the commission has failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask

[1] 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.

for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D).

You indicate that the commission received the original request for information on July 5, 2006. Accordingly, you were required to submit your request for a decision to this office no later than July 19, 2006. Further, you were required to submit the items enumerated under section 552.301(e) to us no later than July 26, 2006. However, you did not request a ruling from or submit the required documents to this office until September 5, 2006. Although you state that the requestors clarified their request by phone on September 1, 2006, you have not informed us of the date on which the commission requested clarification. Since we are unable to calculate whether or to what extent the deadlines mandated by section 552.301 have been tolled, we find that the commission failed to comply with the procedural requirements of section 552.301 in requesting this decision from our office. *See* Open Records Decision No. 663 (1999) (request for clarification does not trigger a new ten business day time interval, but merely tolls the ten day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response)

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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Here, your claim under section 552.101 of the Government Code can provide compelling reasons to withhold information. We will therefore address the submitted arguments.

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, such as chapter 21 of the Texas Labor Code and section 2000e-5 of title 42 of the United States Code. Section 2000e-5(b) 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 employment discrimination complaints 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 indicate 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 confidential under section 21.304 of the Labor Code. The requestor does not appear to have a right of access to this information. Accordingly, the commission must withhold the submitted information under section 552.101 of the Government Code.

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,

Shelli Egger

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 263883

Enc. Submitted documents

c: Jay Cooper and Teresa Ward Cooper
1520 Janwood Drive
Plano, Texas 75075
(w/o enclosures)