



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2009

Mr. Robert N. Jones, Jr.  
Assistant General Counsel  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2009-12892

Dear Mr. Jones:

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# 355176 (TWC Tracking No. 090528-028).

The Texas Workforce Commission (the "commission") received a request for information relating to a housing discrimination complaint filed by the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, the commission acknowledges, and we agree, that it failed to comply with the procedural requirements of section 552.301 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; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

(Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You raise section 552.111 of the Government Code as an exception to disclosure of the requested information. However, section 552.111 is a discretionary exception. It serves only to protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (governmental body may waive section 552.111), 470 at 7 (1987) (statutory predecessor to section 552.111 is discretionary exception). Therefore, section 552.111 does not provide a compelling reason to overcome the presumption of openness and the commission may not withhold any of the information at issue under section 552.111. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness; therefore, we will consider whether or not these exceptions apply to the submitted information.

Section 3616 of title 42 of the United States Code states that the commission is authorized by statute to utilize the services of state and local fair housing agencies to assist in meeting its statutory mandate to enforce laws prohibiting discrimination. *See* 42 U.S.C. § 3616. You state that, pursuant to this authorization, the commission's Civil Rights Division (the "CRD") is currently operating under a cooperative agreement with the U.S. Department of Housing and Urban Development ("HUD") in the investigation and resolution of complaints of housing discrimination. Section 301.036 of the Property Code details that the CRD shall receive, investigate, seek to conciliate, and act on complaints alleging violations of the Texas Fair Housing Act. *See* Prop. Code § 301.036. Then, upon the filing of a complaint, both federal and state law mirror each other in language and encourage conciliation to the extent feasible. *See* 42 U.S.C. § 3610(b) (providing that during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal the commission shall engage in conciliation, to the extent feasible); Prop. Code § 301.085 (providing that the commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in conciliation with respect to the complaint).

You indicate the CRD handled a discrimination complaint filed with the commission under its cooperative agreement. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. 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. Section 552.101 encompasses information protected by section 301.085 of the Property Code, which provides in pertinent part:

(e) Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

(f) After completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.

Prop. Code § 301.085(e), (f). Section 301.085(f) mandates release of the final investigative report upon request of a party to the complaint. In this instance, the requestor is the complainant in the discrimination claim. *See id.* § 301.003 (aggrieved person is person claimed to be injured by discriminatory housing practice). Thus, pursuant to section 301.085(f) the submitted final investigative report must generally be released to this requestor. However, section 301.085(e) prohibits release of statements made or actions taken during conciliation efforts without written consent from all concerned persons. *See id.* § 301.085(e). Thus, we find the release provision in subsection 301.085(f) is limited by subsection 301.085(e). You state you have not received the written consent of all concerned persons. Accordingly, we find the commission must withhold the information it has marked that relates to conciliation efforts under section 552.101 of the Government Code in conjunction with section 301.085(e), but must release the remainder of the final investigative report under section 301.085(f) of the Property Code.

You contend portions of the remaining information are excepted from disclosure under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy.<sup>2</sup> However, because the requestor in this instance has a statutory right of access to the information at issue, the commission may not withhold any of this information from the requestor pursuant to common-law privacy.

You also assert portions of the remaining information are excepted from disclosure under section 552.130 of the Government Code, which excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. Although we agree the remaining information contains Texas driver's license information that is generally excepted from disclosure under section 552.130, we again note in this instance the requestor has a statutory right of access to the requested information.

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<sup>2</sup>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 (Tex. 1976).

A specific statutory right of access prevails over general exceptions to disclosure under the Act. Open Records Decision 451 at 4 (1986). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 301.085(f) of the Property Code and the confidentiality provided under section 552.130. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451. In this instance, section 301.085(f) mandates the release of the final investigative report of a housing complaint upon request of a party to the complaint, however, in accordance with section 301.085(e), any statements made during conciliation efforts may not be disclosed without the consent of all parties involved. Section 552.130 specifically protects Texas motor vehicle record information. Thus, we conclude section 552.130 is more specific than the general right of access provided under section 301.085(f) of the Property Code. We note that, although you seek to withhold the requestor’s driver’s license information under section 552.130, the purpose of section 552.130 is to protect the privacy interests of individuals. Accordingly, this requestor has a right of access under section 552.023 of the Government Code to her driver’s license information. *See* Gov’t Code § 552.023 (a) (person or person’s authorized representative has special right of access to records that contain information relating to the person and are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We therefore conclude, notwithstanding section 301.085(f), the commission must withhold the Texas driver’s license information you have marked, with the exception of the requestor’s driver’s license information, under section 552.130 of the Government Code.

In summary, the marked information relating to conciliation attempts is confidential under section 301.085(e) of the Property Code and must be withheld under section 552.101 of the Government Code. The commission must withhold the driver’s license information you have marked, with the exception of the requestor’s driver’s license information, under section 552.130 of the Government Code. The remaining information must be released.<sup>3</sup>

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<sup>3</sup>The information being released contains the requestor’s social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to her own social security number. *See* generally Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 355176

Enc. Submitted documents

c: Requestor  
(w/o enclosures)