



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 16, 2009

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

OR2009-13063

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# 355174 (TWC Tracking No. 090626-071).

The Texas Workforce Commission (the "commission") received a request for the final investigation report relating to a housing discrimination complaint filed by the requestor. You indicate you will redact social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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

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<sup>1</sup>We note that 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.

<sup>2</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.

state that, pursuant to this authorization, the commission's Civil Rights Division ("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, which 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 other statutes, such as 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 you have marked that relates to conciliation efforts under section 552.101 of the Government Code in conjunction with section 301.085(e) of the Property Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code §§ 159.002(b), (c). Information that is subject to the MPA includes medical records and information that was obtained from medical records. *See* Occ. Code § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). Upon review, we find the information you have marked consists of information obtained from medical records. Accordingly, the commission may only disclose the marked medical record information in accordance with the MPA.

However, as noted above, the requestor in this instance is the complainant and thus, has a statutory right of access under section 301.085(f) of the Property Code to the information at issue. Thus, the instant situation presents a conflict between the protection of the MPA and the release provision of section 301.085(f) of the Property Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See* Gov't Code § 311.026; *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. 583 (1990), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

The MPA specifically makes medical records confidential, while section 301.085(f) gives a general right of access to the final investigative report upon request of a party to the complaint. *See* Occ. Code § 159.002(a), (b); Prop. Code § 301.085(f). Therefore, we find

that the confidentiality provisions of the MPA are more specific than the access provision of section 301.085. Although the provisions of the MPA at issue here were enacted prior to the enactment of section 301.085, because the MPA is the more specific statute, we find the MPA prevails over section 301.085 and the commission may only release the marked medical record information in accordance with the MPA.<sup>3</sup>

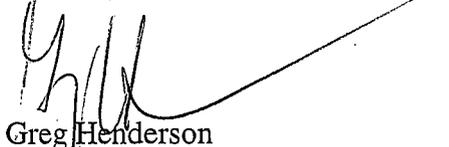
Next, we address the commission's claim under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See Gov't Code* § 552.130(a)(1). Although you believe that this exception is applicable to other information contained in the submitted documents, we find that none of the remaining information falls within the scope of section 552.130. Therefore, none of the remaining information may be withheld on that basis.

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 may only disclose the marked medical record information in accordance with the MPA. 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.

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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

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<sup>3</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

Ref: ID#355174

Enc. Submitted documents

c: Requestor  
(w/o enclosures)