



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2010

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

OR2010-17016

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# 399837 (TWC Tracking No.: 100824-004).

The Texas Workforce Commission (the "commission") received a request for investigative files pertaining to the requestor's client. You state you have redacted mediation and conciliation information under section 21.207(b) of the Labor Code pursuant to the previous determination issued to the commission in Open Records Letter No. 2009-10954 (2009). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>Although you also raised section 552.111 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. *See* Gov't Code §§ 552.301, 552.302.

<sup>2</sup>To the extent any additional responsive information existed on the date the commission received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We note the information at issue pertains to a complaint of unlawful employment discrimination that was investigated by the commission under section 21.204 of the Labor Code and on behalf of the Equal Employment Opportunity Commission. 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. This exception encompasses information that other statutes make confidential. Pursuant to section 21.204 of the Labor Code, the commission may investigate a complaint of an unlawful employment practice. *See* Labor 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), .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 [s]ection 21.204 except as necessary to the conduct of a proceeding under this chapter." *Id.* § 21.304. Thus, the information at issue is generally confidential under section 21.304 of the Labor Code. However, in this instance, the requestor's client is a party to the complaint. Section 21.305 of the Labor Code addresses the release of commission records to a party to a complaint filed under section 21.201 of the Labor Code and provides as follows:

(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. In this case, the commission has taken final action; therefore, section 21.305 is applicable.

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 as follows:

(a) 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.

(b) Pursuant to the authority granted the [c]ommission in Texas Labor Code § 21.305, reasonable access shall not include access to the following:

(1) information excepted from required disclosure under Texas Government Code, chapter 552; or

(2) investigator notes.

40 T.A.C. § 819.92. A governmental body must have statutory authority to promulgate a rule. *See Railroad Comm'n v. ARCO Oil*, 876 S.W.2d 473 (Tex. App.—Austin 1994, writ denied). A governmental body has no authority to adopt a rule that is inconsistent with existing state law. *Id.*; *see also Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 750 (Tex. 1995); Attorney General Opinion GA-497 (2006) (in deciding whether governmental body has exceeded its rulemaking powers, determinative factor is whether provisions of rule are in harmony with general objectives of statute at issue).

As noted above, section 21.305 of the Labor Code requires the release of commission complaint records to a party to a complaint under certain circumstances. *See* Labor Code § 21.305. The commission's rule in subsection 819.92(b) operates as a denial of access to complaint information provided by subsection 819.92(a). *See* 40 T.A.C. § 819.92. The rule conflicts with the mandated party access provided by section 21.305 of the Labor Code. The commission submits no arguments or explanation to resolve this conflict. Being unable to resolve this conflict, we cannot find that rule 819.92(b) operates in harmony with the general objectives of section 21.305 of the Labor Code. Thus, we must make our determination under section 21.305 of the Labor Code. *See Edgewood*, 917 S.W.2d at 750.

In this case, final agency action has been taken. You do not inform us that the complaint was resolved through a voluntary settlement or conciliation agreement. Thus, pursuant to sections 21.305 and 819.92(a), the requestor has a right of access to the commission's records relating to the complaint.

You assert portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, and 552.136 of the Government Code. However, these sections are general exceptions to disclosure under the Act. A specific statutory right of access prevails over the common law and general exceptions to disclosure under the Act. *See Gallagher Headquarters Ranch*

*Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common law principle); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor, in this instance, has a statutory right of access to the requested information, the commission may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy, or section 552.136. As you raise no further exceptions to disclosure, the information must be released to this requestor.

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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 399837

Enc. Submitted documents

c: Requestor  
(w/o enclosures)