



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2011

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

OR2011-00366

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# 405137 (TWC Tracking No. 101019-003).

The Texas Workforce Commission (the "commission") received a request for a specified report. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments received from the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

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 ("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 301.063 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 § 301.063. 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

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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.

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 information derived from the investigation and 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 and information derived from the investigation 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 generally release the remainder of the submitted information under section 301.085(f).

You also assert that portions of the submitted information are excepted from disclosure under section 552.101 in conjunction with common-law privacy.<sup>2</sup> However, because the requestor

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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).

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 section 552.101 in conjunction with common-law privacy. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

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 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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 405137

Enc. Submitted documents

c: Requestor  
(w/o enclosures)