



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 20, 2011

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

OR2011-00997

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# 406638 (TWC Tracking No. 101109-005).

The Texas Workforce Commission (the "commission") received a request for information relating to employment discrimination complaints and violations involving a named business entity and a specified time interval. You state the commission will withhold any information encompassed by the previous determination issued to the commission under section 21.207(b) of the Labor Code in Open Records Letter No. 2009-10954 (2009).¹ You claim 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 information you submitted.² We assume the commission has released any other type of information that would be responsive to this request, to the extent such information existed when the commission received the request. If not, then any such information must be released immediately.³ See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the commission to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

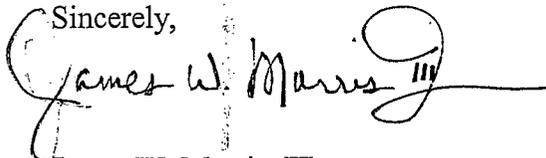
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Pursuant to section 21.204 of the 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 Section 21.204 except as necessary to the conduct of a proceeding under this chapter." *Id.* § 21.304.

You indicate the submitted information pertains to complaints of unlawful employment practices investigated by the commission under section 21.204 and on behalf of the Equal Employment Opportunity Commission. Based on your representations, we find section 21.304 of the Labor Code is applicable to the submitted information. You state the release provisions of section 21.305 of the Labor Code are not applicable in this instance. We therefore conclude the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.304 of the Labor Code. As we are able to make this determination, we need not address your other arguments against disclosure.

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, 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,

A handwritten signature in cursive script that reads "James W. Morris III". The signature is written in dark ink and includes a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 406638

Enc: Submitted documents

c: Requestor
(w/o enclosures)