



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 23, 2011

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

OR2011-03984

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# 412161 (TWC Tracking No. 101228-003).

The Texas Workforce Commission (the "commission") received a request for records related to a specified case involving a housing discrimination complaint. You state that some of the information will be provided to the requestor upon payment of reproduction costs. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we must address the commission's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The commission received the request for information on December 28, 2010. Thus, the commission was

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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 those submitted to this office.

required to request a decision from this office by January 11, 2011. Consequently, because the commission submitted its request for a decision on January 14, 2011, we find the commission failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise section 552.116 of the Government Code, this section is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.116 does not provide a compelling reason to withhold information under section 552.302. Therefore, the commission may not withhold the submitted information under section 552.116 of the Government Code. However, your claim under section 552.101 can provide a compelling reason for non-disclosure; therefore we will consider the applicability of that exception.

Section 3616 of title 42 of the United States Code authorizes the commission 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 301.036 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 investigated a discrimination complaint filed with the commission under its cooperative agreement. You claim that the information you have marked in the submitted documents is excepted from disclosure under section 552.101 of the Government Code in conjunction with both federal and state law. Section 552.101 of the Government

Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by section 3610 of title 42 of the United States Code, which provides in pertinent part:

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

42 U.S.C. § 3610(d)(1). The submitted information consists of a case review form, a case summary, and investigative notes into allegations of housing discrimination. You state the information you have marked is excepted from disclosure because the CRD’s efforts at conciliation are confidential under section 552.101 in conjunction with section 3610(d)(1) of title 42 of the United States Code. We note, however, that section 3610(d)(1) does not protect “conciliation efforts;” it protects things “said or done in the course of conciliation[.]” *Id.* Upon review, we find the information you have marked does not consist of things said or done in the course of a conciliation. Accordingly, we find the commission may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 3610(d)(1) of title 42 of the United States Code.

Section 552.101 also encompasses section 301.085(e), which provides:

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.

Prop. Code § 301.085(e). You also state the information you have marked is excepted from disclosure because the CRD’s efforts at conciliation are confidential under section 552.101 in conjunction with section 301.085(e) of the Property Code. We note, however, section 301.085(e) does not protect “conciliation efforts;” it protects “statements made or actions taken in the conciliation[.]” *Id.* Upon review, we find the information you have marked does not consist of statements made or actions taken in a conciliation. Accordingly, we find the commission may not withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 301.085(e).

Section 552.137 provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)–(c). Upon review, we find the e-mail addresses we have marked are not the kind excluded by section 552.137(c). Accordingly, the commission

must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.<sup>2</sup>

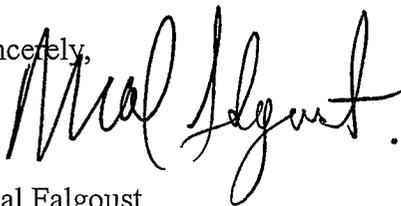
You state that some of the requested information is protected by copyright. We note that a custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the commission must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released in accordance with copyright law.

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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

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<sup>2</sup>As you acknowledge, Open Records Decision No. 684 (2009), serves as a previous determination authorizing the commission to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 412161

Enc. Submitted documents

c: Requestor  
(w/o enclosures)