



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 27, 2011

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

OR2011-05772

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# 415617 (TWC Tracking No. 110112-001).

The Texas Workforce Commission (the "commission") received a request for six categories of information pertaining to a specified housing discrimination complaint. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we note the commission did not submit for our review information responsive to categories (a) and (d) of the request. Although you state the commission submitted a representative sample of information, no portion of the submitted representative sample pertains to the rules, guidelines and procedures under which commission investigators in the Civil Rights Division ("CRD") are expected to perform their duties, or the appeal procedures and exhaustion of administrative remedies in connection with housing complaints filed with the commission. Thus, we find the submitted information is not representative of the information sought in these categories of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion 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. *See Gov't Code § 552.302* (where request for attorney general decision does not

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted information responsive to categories (a) and (d) for our review, we assume you have released it. *See id.* §§ 552.301, .302. If you have not released this information, you must do so at this time. *See* 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).

Next, we must address the commission's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the commission received the request for information on January 12, 2011. However, you did not request a ruling from this office until February 18, 2011. Thus, 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 requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert the submitted records are excepted under sections 552.103, 552.108, and 552.116 of the Government Code, these sections are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the submitted information may not be withheld under sections 552.103, 552.108, and 552.116 of the Government Code. However, because section 552.101 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of this exception to the submitted information.

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, 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 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 period beginning with filing of complaint and ending with filing of charge or dismissal, the commission shall engage in conciliation, to the extent feasible); Prop. Code § 301.085 (providing that commission shall, during period beginning with filing of a complaint and ending with filing of charge or dismissal by commission, to the extent feasible, engage in conciliation with respect to complaint).

You represent that CRD investigated the specified housing discrimination complaint filed with the commission under its cooperative agreement with HUD. You claim the submitted information 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.” Gov’t Code § 552.101. This section 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 housing discrimination complaint and a TEAPOTS case print. You state this information is excepted from disclosure because 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 submitted information does not consist of things said or done in the course of a conciliation. Accordingly, we find the commission may not withhold this information 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) of the Property Code, which provides:

(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.

Prop. Code § 301.085(e). You also state the submitted information 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.* Accordingly, we find the submitted information does not consist of statements made or actions taken in a conciliation. Thus, we conclude the commission may not withhold this information under section 552.101 of the Government Code in conjunction with section 301.085(e). As you raise no other exceptions to disclosure, the submitted 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, 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 415617

Enc. Submitted documents

c: Requestor
(w/o enclosures)