



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 5, 2011

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

OR2011-09493

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# 422698 (ORR# 110413-003).

The Texas Workforce Commission (the "commission") received a request for a specified investigation. You claim the requested 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>

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedures 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), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the

---

<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.

written request. You inform us the commission received the request for information on April 13, 2011, and was open with only a skeleton crew on April 21, 2011 in observance of a state holiday. Thus, the commission's ten-business-day deadline to ask for a decision from this office and state the exceptions that apply was April 28, 2011. However, you did not request a ruling from this office and state the exceptions that apply until April 29, 2011. Thus, the commission failed to comply with the procedural requirements mandated by section 552.301(b).

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* 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). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires the commission to withhold 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, 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 represent the CRD investigated the specified housing complaint filed with the commission under its cooperation agreement with HUD. You claim the requested report is excepted from disclosure under section 552.101 of the Government Code in conjunction with state and federal law. Section 552.101 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 federal law. You assert the submitted information is confidential under section 103.230 of title 24 of the Code of

Federal Regulations, which pertains to investigations conducted under part 103 of title 24 of the Code of Federal Regulations. *See* 24 C.F.R. § 103.230(a). Part 103 applies to complaints alleging discriminatory housing practices because of race, color, religion, sex or national origin, and complaints alleging discriminatory housing practices on account of handicap or familial status occurring on or after March 12, 1989. *Id.* § 103.1(b). Section 103.230 provides the following:

(a) At the end of each investigation under . . . part [103], the Assistant Secretary [for Fair Housing and Equal Opportunity in HUD] will prepare a final investigative report. The investigative report will contain:

- (1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. HUD, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under Part 180 of this chapter or a civil action under Title VIII of the Fair Housing Act;
- (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
- (3) A summary description of other pertinent records;
- (4) A summary of witness statements; and
- (5) Answers to interrogatories.

(b) A final investigative report may be amended at any time, if additional evidence is discovered.

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in § 103.330, the Assistant Secretary will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the Assistant Secretary shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request.

*Id.* § 103.230; *see id.* § 103.9 (defining Assistant Secretary for purposes of part 103). You indicate the requested information pertains to an investigation of alleged discriminatory housing practices that the CRD conducted under part 103 pursuant to the commission's cooperative agreement with HUD and on behalf of HUD. The submitted information consists of a final report of the investigation of a complaint of alleged housing discrimination. You assert this report is confidential under section 103.230 because,

although “[section] 103.230 authorizes the [commission] to release a copy of the final report to a party to the complaint[, t]he regulation does not authorize the [commission] to release a copy of the final investigative report to a third party.” However, for information to be confidential under section 552.101, the provision of law must expressly require confidentiality; a confidentiality requirement will not be inferred from a provision’s structure. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality under section 552.101 predecessor requires express language making information confidential or stating information shall not be released). Section 103.230 does not expressly require confidentiality of information derived from an investigation conducted under part 103. *See* 24 C.F.R. § 103.230(c). Instead, it only requires information derived from an investigation under part 103, including the final investigative report, to be made available to the aggrieved person and the respondent upon request following the completion of the investigation. *See id.* Furthermore, this office has determined information is not made confidential by negative implication simply because a statute designates other specific information as subject to release. Open Records Decision No. 525 at 3 (1989). Consequently, the final investigation report at issue is not excepted from disclosure to the public simply because section 103.230 requires release of the report to the complainant and the respondent upon request. Therefore, we conclude section 103.230 does not make information confidential for purposes of section 552.101 of the Government Code. Thus, the commission may not withhold the submitted information from release on that ground.

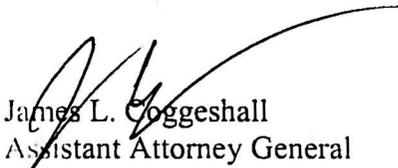
Section 552.101 also encompasses information protected by state law, including section 301.085 of the Property Code. Section 301.085(e) provides “[s]tatements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.” Prop. Code § 301.085. You state the submitted 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.” Rather, 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). Therefore, the commission must release the submitted information to the 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 422698

Enc. Submitted documents

c: Requestor  
(w/o enclosures)