ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

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

OR2011-09675

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# 423028 (TWC Tracking No. 110418-009).

The Texas Workforce Commission (the "commission") received a request for the final investigative report related to a specified case. You state the commission will release most of the information upon the requestor's payment of copying costs. You claim portions of the submitted information are 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.[1]

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,

[1]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.

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 state the submitted information relates to a discrimination complaint filed with the commission under its cooperative agreement. You claim the information you have marked 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 section 3610 of title 42 of the United States Code, which provides:

> (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 final investigative report. 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 consists 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:

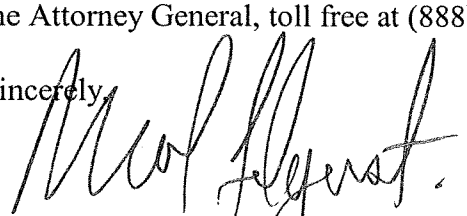
> Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

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 "[s]tatements 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). As the commission raises no other exceptions to disclosure, the information you have marked 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 423028

Enc. Submitted documents

c: Requestor
(w/o enclosures)