



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2011

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

OR2011-10395

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# 424477 (TWC Tracking No. 110425-062).

The Texas Workforce Commission (the "commission") received a request for copies of all records regarding two specified charge numbers. You state the commission has withheld any mediation and conciliation information under section 21.207(b) of the Labor Code pursuant to the previous determination issued to the commission in Open Records Letter No. 2009-10954 (2009). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, 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

¹We 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.

the exceptions to disclosure 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 April 25, 2011. Thus, the commission's ten-business-day deadline was May 9, 2011. The commission's request for a decision, however, was not sent to this office until May 16, 2011. Therefore, 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). Because sections 552.101, 552.102, 552.130, 552.136, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of your claimed exceptions to the submitted information.

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); 21.201. 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.

The submitted information pertains to a complaint of unlawful employment discrimination that was investigated by the commission under section 21.204. Thus, the submitted information is confidential under section 21.304 of the Labor Code. However, you inform us the requestor is a party to the complaint. Section 21.305 of the Labor Code addresses the release of commission records to a party to a complaint filed under section 21.201 of the Labor Code and provides as follows:

- (a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

Id. § 21.305. You state the commission has taken final action in this case. You do not inform us the complaint was resolved through a voluntary settlement or conciliation agreement. Therefore, pursuant to section 21.305 of the Labor Code, the requestor has a right of access to the commission's records relating to the complaint.

We note, however, the submitted information contains W-4 forms. Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that this section renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information includes certain data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the W-4 forms constitutes tax return information that is confidential under section 552.101 of the Government Code in conjunction with federal law. However, in this instance, the requestor has a right of access to the submitted information under section 21.305 of the Labor Code. As a federal law, section 6103(a) preempts any conflicting state provisions, including section 21.305 of the Labor Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Accordingly we find that, notwithstanding section 21.305, the W-4 forms are confidential pursuant to section 6103(a) of title 26 of the United States Code, and must be withheld under section 552.101 of the Government Code.²

You assert portions of the remaining information are excepted under section 552.101 of the Government Code in conjunction with common-law privacy, and under sections 552.102, 552.136, 552.137, and 552.147 of the Government Code. However, sections 552.102, 552.136, 552.137 and 552.147 are general exceptions to disclosure under the Act. A specific statutory right of access prevails over general exceptions to disclosure under the Act. *See*

²As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Furthermore, although you raise common-law privacy for portions of the remaining information, a specific statutory right of access also prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Because the requestor, in this instance, has a statutory right of access to the requested information, the commission may not withhold any of the remaining information under common-law privacy, or sections 552.102, 552.136, 552.137, and 552.147 of the Government Code.

Finally, you seek to withhold certain information under section 552.130 of the Government Code. This section excepts from disclosure “information [that] relates to ... a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(1)). Unlike your other claimed exceptions, section 552.130 has its own access provisions under the Act. *See* Gov’t Code § 552.130(b) (information described by subsection (a) may be released only if, and in the manner, authorized by chapter 730 of Transportation Code). Thus, section 552.130 is not a general exception under the Act. The remaining records contain a driver’s license number and class designation that are confidential under section 552.130. Therefore, there is a conflict between the confidentiality granted by 552.130 and the right of access granted under section 21.305 of the Labor Code. Where information falls within both a general and a specific provision of law, the specific provision typically prevails over the general, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See id.* § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.) (clear legislative intent required for general statute to prevail over earlier specific statute). In this instance, section 21.305 generally applies to any type of record contained in the commission’s complaint records, while section 552.130 specifically protects motor vehicle record information. Furthermore, section 552.130 was passed in a later legislative session than section 21.305.³ Therefore, we find the confidentiality provision of section 552.130 is more specific than the access provision of section 21.305. Accordingly, the commission must withhold the marked Texas driver’s license information under section 552.130 of the

³Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code).

Government Code. As you raise no additional exceptions to disclosure, the remaining information must be released.⁴

In summary, the commission must withhold the marked W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The commission must also withhold the marked Texas driver's license information pursuant to section 552.130 of the Government Code. The remaining 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/eb

Ref: ID# 424477

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As noted, the requestor in this instance has a special right of access under section 21.305 of the Labor Code to the information being released. Therefore, should the commission receive another request for this information from an individual other than this requestor, the commission must again seek a ruling from this office.