ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2011

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

OR2011-11358

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# 426260 (TWC Tracking No. 110519-019).

The Texas Workforce Commission (the "commission") received a request for information concerning a specified employment discrimination claim filed with the commission's Civil Rights Division. You state the commission redacted 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 remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

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. Section 552.101 encompasses section 21.204 of the Labor Code, which authorizes the commission to investigate a complaint of an unlawful employment practice.

[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.

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); .201. Section 21.304 of the Labor Code provides, "[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 information at issue pertains to a complaint of unlawful employment discrimination that was investigated by the commission under section 21.204 and on behalf of the Equal Employment Opportunity Commission. Thus, the information at issue is confidential under section 21.304 of the Labor Code. However, in this instance, the requestor represents 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 the case that is the subject of this request; therefore, section 21.305 is applicable.

At section 819.92 of title 40 of the Texas Administrative Code, the commission has adopted rules that govern access to its records by a party to a complaint. Section 819.92 provides as follows:

> (a) Pursuant to Texas Labor Code § 21.304 and § 21.305, [the commission] shall, on written request of a party to a perfected complaint under Texas Labor Code § 21.201, allow the party access to [the commission's] records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:
>
> > (1) following the final action of [the commission]; or
> >
> > (2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected

> complaint is pending in federal court alleging a violation of federal law.
>
> (b) Pursuant to the authority granted the [c]ommission in Texas Labor Code § 21.305, reasonable access shall not include access to the following:
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> (1) information excepted from required disclosure under Texas Government Code, chapter 552; or
>
> (2) investigator notes.

40 T.A.C. § 819.92. A governmental body must have statutory authority to promulgate a rule. *See Railroad Comm'n v. ARCO Oil*, 876 S.W.2d 473 (Tex. App.–Austin 1994, writ denied). A governmental body has no authority to adopt a rule that is inconsistent with existing state law. *Id.*; *see also Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 750 (Tex. 1995); Attorney General Opinion GA-497 (2006) (in deciding whether governmental body has exceeded its rulemaking powers, determinative factor is whether provisions of rule are in harmony with general objectives of statute at issue).

As noted above, section 21.305 of the Labor Code requires the release of commission complaint records to a party to a complaint under certain circumstances. *See* Labor Code § 21.305. The commission's rule in subsection 819.92(b) operates as a denial of access to complaint information provided by subsection 819.92(a). *See* 40 T.A.C. § 819.92. The rule conflicts with the mandated party access provided by section 21.305 of the Labor Code. The commission submits no arguments or explanation to resolve this conflict. Being unable to resolve this conflict, we cannot find that rule 819.92(b) operates in harmony with the general objectives of section 21.305 of the Labor Code. Thus, we must make our determination under section 21.305 of the Labor Code. *See Edgewood*, 917 S.W.2d at 750.

In this case, final agency action has been taken. You do not inform us the complaint was resolved through a voluntary settlement or conciliation agreement. Thus, pursuant to sections 21.305 and 819.92(a), the requestor has a right of access to the commission's records relating to the complaint.

You contend the information you have marked, and the Texas driver's license number you will redact pursuant to Open Records Decision No. 684 (2009), are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. 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). Although we agree the information you have marked, along with the additional information we have marked, is generally excepted under section 552.130 of the Government Code, we note in this instance the requestor has a statutory right of access to the requested information.

A specific statutory right of access prevails over general exceptions to disclosure. Open Records Decision No. 451 at 4 (1986). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 21.305 of the Labor Code and the confidentiality provided under section 552.130 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *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.). In this instance, section 21.305 generally applies to any type of record contained in commission complaint records. Section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the general right of access provided by section 21.305. Accordingly, the commission must withhold the class designation and the expiration date you have marked, along with the information we have marked, under section 552.130 of the Government Code.[2]

Next, you assert portions of the submitted information are excepted from disclosure under section 552.101 in conjunction with common-law privacy, and sections 552.102 and 552.117 of the Government Code. Further, you state the commission will redact information under section 552.137 of the Government Code, pursuant to Open Records Decision No. 684, and social security numbers pursuant to section 552.147(b) of the Government Code.[3] We note, however, sections 552.102, 552.117, 552.137, and 552.147 are general exceptions to disclosure under the Act and a specific statutory right of access prevails over the common law and general exceptions to disclosure under the Act. *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); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). Because the requestor has a statutory right of access to the information at issue, the commission may not withhold the information you have marked under section 552.101 in conjunction with common-law privacy, or under sections 552.102 and 552.117 of the Government Code. Further, the commission may not redact any information under sections 552.137 and 552.147 of the Government Code.

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[2]Pursuant to Open Records Decision No. 684, the commission may withhold the Texas driver's license number at issue under section 552.130 of the Government Code without requesting a decision from this office.

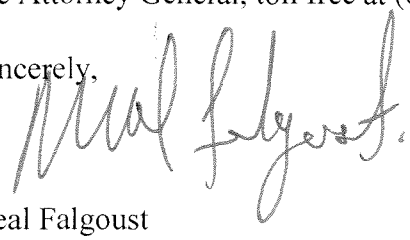
[3]As you acknowledge, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision, unless authorized to release the information according to applicable law. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

In summary, the commission must withhold the class designation and the expiration date you have marked, along with the information we have marked, under section 552.130 of the Government Code. The remaining information must be released.[4]

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/tf

Ref: ID# 426260

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[4]Because the requestor has a special right of access to the submitted information, if the commission receives another request for this same information from a different requestor, the commission must again seek a ruling from our office.