



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2011

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

OR2011-13363

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# 430172 (TWC numbers 110609-036 & 110609-037).

The Texas Workforce Commission (the "commission") received two requests from the same requestor for Civil Rights Division files pertaining to two named individuals. You state some of the requested information will be made available upon payment of costs. You state the commission will redact information regarding attempts at alternative dispute resolution pursuant to the previous determination issued to the commission in Open Records Letter No. 2009-10954 (2009). You claim the submitted 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

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<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.

from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). The commission received the requests for information on June 9, 2011. Accordingly, you were required to provide the information required by section 552.301(b) by June 23, 2011. Moreover, you were required to provide the information required by section 552.301(e) by June 30, 2011. However, this office received the information required by subsections 552.301(b) and 552.301(e) on July 14, 2011. Accordingly, we conclude the commission failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Section 552.101 can provide a compelling reason to overcome this presumption. Therefore, we will address the applicability of section 552.101 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), .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 in compliance with Section 21.305 and as necessary to the conduct of a proceeding under this chapter." Act of May 30, 2011, 82nd Leg., R.S., H.B. 2463, § 1 (to be codified as amendment to Labor Code § 21.304). You state the submitted information pertains to complaints of unlawful employment discrimination that were investigated by the commission under section 21.204 and on behalf of the Equal Employment Opportunity Commission. Thus, this information is generally confidential under section 21.304 of the Labor Code. However, in this instance, the requestor represents

two of the parties to the complaints at issue in the submitted information. 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) Except as provided by Subsection (c), 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) Except as provided by Subsection (c), 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.

(c) Notwithstanding Section 552.023, Government Code, the following information is not considered public information for the purposes of Chapter 552, Government Code, and may not be disclosed to a party to a complaint filed under Section 21.201:

(1) identifying information of persons other than the parties and witnesses to the complaint;

(2) identifying information about confidential witnesses, including any confidential statement given by the witness;

(3) sensitive medical information about the charging party or a witness to the complaint that is:

(A) provided by a person other than the person requesting the information; and

(B) not relevant to issues raised in the complaint, including information that identifies injuries, impairments, pregnancies, disabilities, or other medical conditions that are not obviously apparent or visible;

(4) identifying information about a person other than the charging party that is found in sensitive medical information regardless of whether the information is relevant to the complaint;

(5) nonsensitive medical information that is relevant to the complaint if the disclosure would result in an invasion of personal privacy, unless the information is generally known or has been previously reported to the public;

(6) identifying information about other respondents or employers not a party to the complaint;

(7) information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes; and

(8) identifying information about a person on whose behalf a complaint was filed if the person has requested that the person's identity as a complaining party remain confidential.

(d) In this section, "identifying information" has the meaning assigned by Section 32.51, Penal Code.

Act of May 30, 2011, 82nd Leg., R.S., H.B. 2463, § 2 (to be codified as amendment to Labor Code § 21.305). You state the commission has taken final action in the cases in which the requestor's clients are parties; therefore, section 21.305 of the Labor Code is applicable to some of the submitted information. You do not inform us the complaints at issue were resolved through a voluntary settlement or conciliation agreement. Thus, pursuant to section 21.305, except as provided by subsection 21.305(c), the requestor has a right of access to the commission's records relating to his clients' complaints. You do not argue the information at issue is within any of the categories enumerated in section 21.305(c). Upon review, we find no portion of the submitted information falls within any of the categories of information enumerated by section 21.305(c). Accordingly, the information relating to the requestor's clients' complaints must be disclosed to this requestor pursuant to section 21.305(b) of the Labor Code.

You argue the remaining information contains information relating to complaints filed by third parties. You argue section 21.304 of the Labor Code prohibits the release of this type of information, and you state the requestor is not a party to these third party complaints. Upon review of your arguments and the submitted information, we agree information relating to complaints filed by third parties, which you have marked, is confidential under section 21.304 of the Labor Code. Accordingly, the commission must withhold this information under section 552.101 of the Government Code.

In summary, the commission must withhold the information you have marked relating to third party complaints under section 552.101 of the Government Code in conjunction with

section 21.304 of the Labor Code. The remaining submitted information must be released pursuant to section 21.305(b) of the Labor Code.<sup>2</sup>

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 430172

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released in this instance includes information that is confidential with respect to the general public. Therefore, if the commission receives another request for this information from a different requestor, the commission must again seek a ruling from this office.