



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2012

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

OR2012-03025

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# 446824 (TWC Tracking No. 111213-011).

The Texas Workforce Commission (the "commission") received a request for the investigation file concerning a specified charge of discrimination. 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 state the commission will withhold information pursuant to section 552.147 of the Government Code and Open Records Decision No. 684 (2009).¹ You claim that 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.²

¹Section 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. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the submitted information, which we have marked, is not responsive because it was created after the date the commission received the instant request. The commission need not release this non-responsive information in response to this request, and this ruling will not address that information.

Section 552.101 of the Government Code exempts 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 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 in compliance with Section 21.305 and as necessary to the conduct of a proceeding under this chapter.” *Id.* § 21.304.

You state the information at issue pertains to a complaint of unlawful 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 is the attorney representing 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) 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.

Id. § 21.305(a)-(b). You inform us the commission has not taken final action. You further inform us the commission has not received written certification that a civil action has been filed in federal court in relation to this complaint. Based on your representations, we conclude the responsive information must be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 21.304 of the Labor Code.

You also ask this office to issue a previous determination allowing the commission to withhold without seeking a ruling from this office unlawful discrimination complaint records when the requestor is a party to the complaint if there has been no final action and no civil action relating to the complaint has been filed in federal court alleging a violation of federal law. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); *see also* ORD 673. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 446824

Enc. Submitted documents

c: Requestor
(w/o enclosures)