



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2012

Ms. Lona Chastain
Public Information Coordinator
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2012-11466

Dear Ms. Chastain:

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# 459798 (TWC Tracking No. 120503-026).

The Texas Workforce Commission (the "commission") received a request for information pertaining to a specified charge of discrimination. You state you will provide the requestor with some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.137, and 552.138 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. 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

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

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.

We understand the submitted information pertains to a complaint of unlawful employment discrimination the commission investigated under section 21.204 of the Labor Code and on behalf of the Equal Employment Opportunity Commission. Thus, the information at issue is generally confidential under section 21.304 of the Labor Code. In this instance, however, the requestor is an attorney for 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.

(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.

Id. § 21.305. You do not indicate the complaint was resolved through a voluntary settlement or conciliation agreement. Further, you indicate final agency action has been taken regarding the complaint. Thus, pursuant to section 21.305, the requestor, as a party to the complaint, generally has a right of access to the commission's records relating to the complaint. We note subsection 21.305(c) identifies eight categories of information not considered public information for the purposes of chapter 552 and which may not be disclosed to a party to a complaint filed under section 21.201. You state the submitted information contains identifying information of persons other than the parties and witnesses to the complaint. You seek to withhold the submitted information in its entirety pursuant to section 21.305(c). In the alternative, you seek to withhold the names, addresses, phone numbers, and "other details unique to the individual[s]" at issue. We note "identifying information" has the meaning assigned by section 32.51 of the Penal Code. *See* Penal Code § 32.51 (defining "identifying information" as information that alone or in conjunction with other information identifies a person, including a person's name and date of birth; unique biometric data, including the

person's fingerprint, voice print, or retina or iris image; unique electronic identification number, address, routing code, or financial institution account number; telecommunication identifying information or access device; and social security number or other government-issued identification number). Accordingly, the commission may not withhold the submitted information in its entirety. However, the commission must withhold the names, home addresses, home telephone numbers, cellular telephone numbers, and e-mail addresses of persons other than the parties and witnesses to the complaint under section 552.101 of the Government Code in conjunction with section 21.305(c)(1). The remaining information must be disclosed to this requestor pursuant to section 21.305(b) of the Labor Code.

You assert portions of the remaining information are excepted under sections 552.137 and 552.138 of the Government Code. However, we note a specific statutory right of access generally prevails over exceptions to disclosure under the Act. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). Furthermore, we note section 552.138 protects certain information pertaining to employees, volunteers, clients, the location, and physical layout of a family violence shelter center or sexual assault program and applies only to information maintained by a family violence shelter center or sexual assault program, not the commission. *See* Gov't Code § 552.138; House Comm. on State Affairs, Bill Analysis, S.B. 15, 77th Leg., R.S. (2001) (Engrossed version) ("Senate Bill 15 amends the Government Code to except family violence shelter centers (center) and sexual assault programs (program) from disclosing certain public information."). Accordingly, the commission must release the remaining information to the requestor.

In summary, the commission must withhold the names, home addresses, home telephone numbers, cellular telephone numbers, and e-mail addresses of persons other than the parties and witnesses to the complaint under section 552.101 of the Government Code in conjunction with section 21.305(c)(1) of the Labor Code. The commission must release the remaining submitted information to the requestor.²

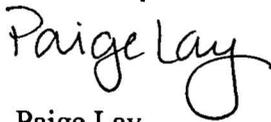
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²Because the requestor has a special right of access to the information being released, if the commission receives another request for this information from an individual other than this requestor, the commission must again seek a decision from this office.

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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 459798

Enc. Submitted documents

cc: Requestor
(w/o enclosures)