



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2012

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

OR2012-11951

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# 460988 (TWC Tracking# 120514-017).

The Texas Workforce Commission (the "commission") received a request for the final investigative report for a specified case number. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of 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>2</sup>

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<sup>1</sup>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.

<sup>2</sup>We assume the "representative sample" of information 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.

Section 3616 of title 42 of the United States Code states the U.S. Department of Housing and Urban Development (“HUD”) is authorized by statute to utilize the services of state and local fair housing agencies to assist in meeting its statutory mandate to enforce laws prohibiting discrimination. *See* 42 U.S.C. § 3616. You state, pursuant to this authorization, the commission’s Civil Rights Division (the “CRD”) is currently operating under a cooperative agreement with HUD in the investigation and resolution of complaints of housing discrimination. Section 301.063 of the Property Code states the CRD shall receive, investigate, seek to conciliate, and act on complaints alleging violations of the Texas Fair Housing Act. *See* Prop. Code § 301.063. Then, upon the filing of a complaint, both federal and state law mirror each other in language and encourage conciliation to the extent feasible. *See* 42 U.S.C. § 3610(b) (providing that during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal, the HUD Secretary shall engage in conciliation, to the extent feasible); Prop. Code § 301.085 (providing that the commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in conciliation with respect to the complaint).

You indicate the CRD handled a discrimination complaint filed with the commission under its cooperative agreement. As such, you claim a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with both federal and state law. 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 information protected by section 3610 of title 42 of the United States Code, which provides in pertinent part:

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

42 U.S.C. § 3610(d)(1). The submitted information consists of an investigative report into allegations of housing discrimination. You state the information you have marked is excepted from disclosure because the CRD’s efforts at conciliation are confidential under section 552.101 of the Government Code in conjunction with section 3610(d)(1) of title 42 of the United States Code. We note, however, that section 3610(d)(1) does not protect “conciliation efforts;” it protects things “said or done in the course of conciliation[.]” *Id.* Upon review, we find the information you have marked consists of neither things said nor done in the course of a conciliation. Accordingly, we find the commission may not withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 3610(d)(1) of title 42 of the United States Code.

Section 552.101 of the Government Code also encompasses section 301.085 of the Property Code, which provides in pertinent part:

(e) Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

Prop. Code § 301.085(e). You also state the information you have marked is excepted from disclosure because the CRD's efforts at conciliation are confidential under section 552.101 of the Government Code in conjunction with section 301.085(e) of the Property Code. We note, however, section 301.085(e) does not protect "conciliation efforts;" it protects "statements made or actions taken in the conciliation[.]" *Id.* Upon review, we find the information you have marked consists of neither statements made nor actions taken in a conciliation. Accordingly, we find the commission may not withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 301.085(e).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses to be excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* Upon review, we have marked portions of the submitted information that are highly intimate or embarrassing and of no legitimate public interest. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information you seeks to withhold is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information at issue may be withheld under section 552.101 on the basis of common-law privacy. As you raise no further exceptions to disclosure, the commission must release the remaining information.<sup>3</sup>

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<sup>3</sup>Because the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released, if the commission should receive another request for this information from someone without such a right of access, the commission should again request an opinion from this office.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 460988

Enc. Submitted documents

c: Requestor  
(w/o enclosures)