



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2012

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

OR2012-16747

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# 468427 (TWC Tracking No. 120802-019).

The Texas Workforce Commission (the "commission") received a request for any and all communications, letters, e-mails, text messages, documents, notes, or recordings between the commission and a named individual or the Fair Housing Council of Greater San Antonio (the "council") concerning three named entities for a specified period of time. You explain the requested information pertains to a discrimination complaint filed with the commission. You state a final report will be released to the requestor upon completion of the investigation. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We first note the submitted information is related to an investigation of a housing complaint and does not include any communications, letters, e-mails, text messages, notes, or recordings between the commission and the named individual or the council. Thus,

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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

although you state the commission has submitted a representative sample of information related to the housing complaint, the submitted information is not representative of any responsive communications, letters, e-mails, text messages, notes, or recordings that are not related to the housing complaint. This open records letter ruling is applicable only to the types of information you have submitted for our review. *See* Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988). This ruling does not authorize the commission to withhold any types of information that are substantially different from the types of information the commission has submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Thus, to the extent any responsive communications, letters, e-mails, text messages, notes, or recordings involving the named individual or the council, other than records related to the housing complaint, existed when the commission received the present request, we assume the commission has released any such information. If not, then the commission must do so immediately.<sup>2</sup> *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

We next note the requestor states he does not seek information about a complainant or any party to a housing complaint. We note a governmental body that receives a request for information must make a good-faith effort to relate the request to responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). The commission has submitted information it deems to be responsive to the present request for information. Therefore, this decision will address the public availability of the submitted information.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

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<sup>2</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

Gov't Code § 552.116(a), (b)(1). For purposes of section 552.116, an audit working paper includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including intra-agency and interagency communications, and drafts of the audit report or portions of those drafts. *Id.* § 552.116(b)(2). Section 3616 of title 42 of the United States Code authorizes the U.S. Department of Housing and Urban Development ("HUD") 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 ("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 details that 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; *see also* 42 U.S.C. § 3610(b). You state the housing discrimination complaint at issue was filed with the commission under its cooperative agreement, and the CRD is conducting an investigation pursuant to federal and state law. You state the submitted information consists of working papers of that ongoing compliance audit and investigation. We understand this audit and investigation is being conducted by the commission's auditor. Based on your representations and our review, we agree this information consists of audit working papers. Therefore, the commission may withhold the information at issue under section 552.116 of the Government Code.<sup>3</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

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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 black ink, appearing to read "Jeffrey W. Giles". The signature is fluid and cursive, with a distinct loop at the end.

Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 468427

Enc. Submitted documents

c: Requestor  
(w/o enclosures)