ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

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

OR2012-18613

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# 472025 (TWC Tracking No. 120713-013).

The Texas Workforce Commission (the "commission") received a request for a copy of the commission's file regarding a specified charge of discrimination. You state the commission will release some of the requested information. You state the commission has withheld 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 claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.147 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

[1]We 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.

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.

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.
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> (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;
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> (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 identifying information of the individuals 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, 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 requestor, however, generally has a right of access to the remaining information pursuant to section 21.305(b) of the Labor Code.

You assert the information the requestor has a right of access to is excepted under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.102 of the Government Code.[2] Further, you state the commission has redacted social security numbers under section 552.147(b) of the Government Code. We note, however, sections 552.102 and 552.147 are general exceptions to disclosure under the Act. A specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Furthermore, although you raise common-law privacy for portions of the submitted information, a specific statutory right of access also prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.— Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, because the requestor has a statutory right of access to the requested information, the commission may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy, or sections 552.102 and 552.147.

In summary, the commission must withhold the names, home addresses, and e-mail addresses of persons other than the parties and witnesses to the complaint under

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[2]You also state the commission will redact information from the requested records pursuant to Open Records Decision No. 684 (2009), which is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 684 at 14-15. We note the submitted representative sample of records does not contain any information the commission is authorized to withhold under Open Records Decision No. 684.

section 552.101 of the Government Code in conjunction with section 21.305(c)(1). The remaining information must be released.[3]

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, 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/tch

Ref: ID# 472025

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[3]We note that because the requestor has a special right of access to this information in this instance, the commission must again seek a decision from this office if it receives another request for the same information from another requestor.