ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2012

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

OR2012-20578

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# 476118 (TWC Tracking No. 121017-014).

The Texas Workforce Commission (the "commission") received a request for information pertaining to complaints filed against eleven specified entities during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101 through 552.1425 of the Government Code. We have considered the claimed exceptions.

We must address the commission's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the commission received the request for information on October 17, 2012. Thus, the commission's ten- and fifteen-business-day deadlines were October 31, 2012 and November 7, 2012, respectively. However, you submitted your request for a ruling from this office on November 5, 2012, after the ten-business-day deadline. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Further, as of the date of this ruling, you have not submitted written comments explaining why the claimed exceptions

apply to the requested information, or a copy of the requested information. Consequently, we find the commission failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless the governmental body overcomes the presumption by demonstrating a compelling reason to withhold the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because the commission has failed to comply with the requirements of the Act, the commission has waived all discretionary exceptions to disclosure. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under any mandatory exceptions. Thus, we have no choice but to order you to release the responsive information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 476118

Enc. Submitted documents

c: Requestor
(w/o enclosures)