ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2013

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

OR2013-02683

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# 478955 (TWC Tracking No. 121121-020).

The Texas Workforce Commission (the "commission") received a request for a specified final investigative report. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).[1] You claim 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.[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 301.036 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 § 301.036. Then, upon the filing of a complaint, both federal

[1]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.

[2]We 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.

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 commission 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 state the submitted information relates to a discrimination complaint filed with the commission under its cooperative agreement. You claim portions of the submitted information are 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 section 3610 of title 42 of the United States Code, which provides as follows:

> (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 a final investigative report. You state portions of the submitted information are 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, 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 at issue consists of neither things said nor done in the course of a conciliation. Accordingly, we find the commission may not withhold the information at issue 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 as follows:

> (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.
>
> (f) After completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.

Prop. Code § 301.085(e), (f). You also state portions of the submitted information are 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.* § 301.85(e). Upon review, we find the information at issue consists of neither statements made nor actions taken in a conciliation. Accordingly, we find the commission may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 301.085(e). Further, we note 301.085(f) mandates release of the final investigative report upon request of a party to the complaint. In this instance, the requestor is the attorney for the respondent in the discrimination claim. *See id.* § 301.003(10) (respondent is person accused of violation in complaint). Accordingly, pursuant to section 301.085(f) the submitted final investigative report must be released to this requestor.

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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 478955

Enc. Submitted documents

c: Requestor
(w/o enclosures)