



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2013

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

OR2013-05168

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# 482648 (TWC Tracking No. 130107-045).

The Texas Workforce Commission (the "commission") received a request for the final investigative report regarding a specified complaint. You state you will redact information in accordance with Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we must address the commission's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling

¹This office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²We 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 those records contain substantially different types of information than that submitted to this office.

from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). You inform us the commission received the request for information on January 7, 2013. You state the commission observed a holiday on January 21, 2013. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the commission's ten-business-day deadline was January 22, 2013. However, you did not request a ruling from this office until January 24, 2013. *See id.* § 552.308. Consequently, we find the commission failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.136 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this section to the submitted information.

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. We understand, 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 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 indicate the submitted information relates to a discrimination complaint filed with the commission under its cooperative agreement.

You inform us the requested information consists of the final investigative report, which is held by the CRD. Section 301.085 of the Property Code provides, "[a]fter 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(f). We note

section 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 aggrieved party in the discrimination claim. *See id.* § 301.003(1) (definition of aggrieved person). Accordingly, pursuant to section 301.085(f) the requested final investigative report must be released to this requestor.

You assert portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code. However, section 552.136 of the Government Code is a general exception to disclosure under the Act, and a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor in this instance has a statutory right of access to the information at issue, the commission may not withhold any of this information from the requestor pursuant to section 552.136 of the Government Code. As you raise no further exceptions to disclosure, the commission must release the information at issue to the requestor.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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

³We note the requestor has a right of access to the information being released. Because such information may be confidential with respect to the general public, if the commission receives another request for this information from a different requestor, the commission must again seek a ruling from this office.

Ref: ID# 482648

Enc. Submitted documents

c: Requestor
(w/o enclosures)