



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2013

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

OR2013-13776

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# 495791 (TWC Tracking No. 130520-016).

The Texas Workforce Commission (the "commission") received two requests for all records related to TWCCRD #1120042-HU and HUD #06-12-1234-8. You claim portions of the submitted information are 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.¹

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

¹We 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.

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 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 of the Government Code 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). 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 submitted information consists of portions of a final investigative report, and the requestors are the complainant and her authorized representative in the discrimination claim. *See id.* § 301.003 (aggrieved person is person claimed to be injured by discriminatory housing practice). Thus, pursuant to section 301.085(f), the submitted information must generally be released to these requestors. However, section 301.085(e) prohibits release of statements made or actions taken during conciliation efforts without written consent from all concerned persons. *See id.* § 301.085(e). Thus, we find the release provision in subsection 301.085(f) is limited by subsection 301.085(e). 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 301.085(e) of the Property Code. We note section 301.085(e) does not protect “conciliation efforts;” it protects “statements made or actions taken in the conciliation[.]” *Id.* You state you have not received the written consent of all concerned persons. Accordingly, we find the commission must withhold the information we have marked that consists of statements made or action taken during

conciliation under section 552.101 of the Government Code in conjunction with section 301.085(e). Upon review, we find the remaining information you have marked consists of neither statements made nor actions taken in conciliation. Accordingly, we find the commission may not withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 301.085(e). Thus, pursuant to section 301.085(f), the commission must generally release the remaining information.

Section 552.101 of the Government Code also 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). You state portions of the remaining 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) also does not protect "conciliation efforts;" it protects things "said or done in the course of conciliation[.]" *Id.* Upon review, we find the remaining information you have marked consists of neither things said nor done in the course of conciliation. Accordingly, we find the commission may not withhold the remaining information you have marked under section 552.101 in conjunction with section 3610(d)(1) of title 42 of the United States Code.

You also assert portions of the remaining information are excepted from disclosure under section 552.101 in conjunction with common-law privacy.² However, 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 552.101 in conjunction with common-law privacy. *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).

²Common-law privacy protects information if: (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

In summary, the commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 301.085(e) of the Property Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/dls

Ref: ID# 495791

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)