



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2013

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

OR2013-21314

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# 507868 (ORR# 130916-008).

The Texas Workforce Commission (the "commission") received a request for the investigation files for two specified cases involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us the requestor was required to make a deposit for payment of anticipated costs for records relating to one of the specified cases. *See* Gov't Code § 552.263(a) (governmental body may require deposit or bond for payment of anticipated costs in certain instances if governmental body provides requestor with written itemized statement). You state the commission has not received the required deposit. Therefore, the commission is not required to release any responsive information for which it has not received the required deposit. *See id.* § 552.263(e) (if governmental body requires deposit

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.

or bond for anticipated costs pursuant to section 552.263, request for information is considered received on date governmental body receives deposit or bond); *see also id.* § 552.263(f) (requestor who fails to make a deposit or post a bond required under subsection (a) before the 10th business day after the date the deposit or bond is required is considered to have withdrawn the request for the copy of the public information that precipitated the requirement of the deposit or bond). However, if the commission timely receives the required deposit, the commission must seek a ruling from this office before withholding any responsive information.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

Gov't Code § 552.116(a), (b)(1). For purposes of section 552.116, an audit working paper includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including intra-agency and interagency communications, and drafts of the audit report or portions of those drafts. *Id.* § 552.116(b)(2). Section 3616 of title 42 of the United States Code authorizes the United States 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 301.063 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 § 301.063; see also 42 U.S.C. § 3610(b).* You state the housing discrimination complaint at issue was filed with the commission under its cooperative agreement, and the CRD is conducting an investigation pursuant to federal and state law. You state the submitted information consists of working papers of that ongoing compliance audit and investigation. We understand this audit and investigation are being conducted by the commission's auditor. Based on your representations and our review, we agree this information consists of audit working papers. Therefore, the commission may withhold the submitted information under section 552.116 of the Government Code.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 507868

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining arguments against disclosure.