



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 4, 2009

Ms. Margo M. Kaiser  
Staff Attorney  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2009-01461

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# 334150 (TWC Tracking No. 081017-022).

The Texas Workforce Commission (the "commission") received a request for a specified investigative file involving a discrimination charge. You state you will release some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that some of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date of the request. The commission need not release non-responsive information in response to this request, and this ruling will not address that information.

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<sup>1</sup>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 those records contain substantially different types of information than that submitted to this office.

Next, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. Gov't Code § 552.301(a), (b). Although you state the commission received the request for information on October 17, 2008, you did not request a ruling from this office until November 24, 2008. You state that no final agency action regarding the discrimination charge at issue had been taken at the time of the request and that the request could not be processed because of "the open investigation." You further state that "[b]ecause the requester did not file a new request and the [commission] is not required under the [Act] to hold a request open pending the creation of the documents requested or the ripening of a right of access, the usual time limits required by the [Act] are not applicable to this case." However, we note that the deadlines contained in section 552.301 of the Government Code are fixed by statute. *See* Open Records Decision No. 514 at 1-2 (1988), Attorney General Opinion JM-672 (1987). Consequently, we find that the commission failed to comply with the requirements of section 552.301 in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). 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). Sections 552.107 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 663 at 5 (1999) (governmental body may waive section 552.111), 665 at 2 n. 5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the commission has waived its claims under sections 552.107 and 552.111. Therefore, the commission may not withhold any of the submitted information under sections 552.107 and 552.111. However, sections 552.101 and 552.137 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require the commission to withhold portions of the submitted information.

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. This exception encompasses information protected by other statutes. Pursuant to section 21.204 of the Labor Code, the commission may investigate a complaint of an unlawful employment practice. *See* Labor Code § 21.204; *see also id.* §§ 21.0015

(powers of Commission on Human Rights under Labor Code chapter 21 transferred to commission's civil rights division), 21.201. Section 21.304 of the Labor Code provides that "[a]n officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter." *Id.* § 21.304.

You indicate the information at issue pertains to a complaint of unlawful employment practices investigated by the commission under section 21.204 and on behalf of the EEOC. We therefore agree that section 21.304 of the Labor Code is applicable to the responsive information. It does not appear that any of the release provisions in section 21.305 of the Labor Code apply. Therefore, the responsive information is confidential pursuant to section 21.304 of the Labor Code and must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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](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 at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/cc

Ref: ID# 334150

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)