



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Mr. Robert N. Jones, Jr.
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2009-11099

Dear Mr. Jones:

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# 351522 (TWC Tracking No. 090521-050).

The Texas Workforce Commission (the "commission") received a request for information pertaining to a specified discrimination complaint. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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 the request was received. The commission need not release non-responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd).

Next, section 2000e-5(b) of title 42 of the United States Code states in relevant part the following:

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved . . . alleging that an employer . . . has engaged in an unlawful employment practice, the [Equal Employment Opportunity Commission (the

¹We assume that 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.

“EEOC”)] shall serve a notice of the charge . . . on such employer . . . , and shall make an investigation thereof . . . Charges shall not be made public by the [EEOC].

42 U.S.C. § 2000e-5(b). The EEOC is authorized by statute to utilize the services of state fair employment practices agencies to assist in meeting its statutory mandate to enforce laws prohibiting discrimination. *See id.* § 2000e-4(g)(1). The commission informs us that it has a contract with the EEOC to investigate claims of employment discrimination allegations.

Pursuant to section 21.204 of the Labor Code, the commission may investigate a complaint of an unlawful employment practice.² *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 publicly disclose 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 state that 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 the information at issue is confidential under section 21.304 of the Labor Code. In this instance, the requestor is the attorney representing a party to the complaint. Section 21.305 of the Labor Code concerns the release of commission records to a party to a complaint filed under section 21.201 and provides the following:

(a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

Id. § 21.305. At section 819.92 of title 40 of the Texas Administrative Code, the commission has adopted rules that govern access to its records by a party to a complaint. Section 819.92(a) provides the following:

²Section 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 made confidential by statute.

(a) Pursuant to Texas Labor Code § 21.304 and § 21.305, [the commission] shall, on written request of a party to a perfected complaint filed under Texas Labor Code § 21.201, allow the party access to the [commission's] records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:

(1) following the final action of the [commission]; or

(2) if a party to the perfected complaint or the party's attorney certifies in writing that a civil action relating to the perfected complaint is pending in federal court alleging a violation of federal law.

40 T.A.C. § 819.92(a). You inform us that the commission has not taken final action. You further inform us that the commission has not received written certification that a civil action has been filed in federal court in relation to this complaint. Based on your representations, we conclude the submitted information must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 21.304 of the Labor Code and section 819.92 of title 40 of the Texas Administrative Code.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 at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

³As our ruling is dispositive, we need not address your remaining claims against disclosure of the submitted information.

Ref: ID# 351522

Enc. Submitted documents

c: Requestor
(w/o enclosures)