



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 19, 2009

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR2009-11595

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code.<sup>1</sup> Your request was assigned ID# 353334.

The El Paso Independent School District (the "district"), which you represent, received a request for "[a] copy of the tape of the meeting of the Board of Trustees, closed session, Grievance Hearing, held in the Board Room on April 14, 2009" concerning the grievance of a certain district employee who has filed a charge of discrimination against the district with the United States Equal Employment Opportunity Commission (the "EEOC"). You claim the submitted information is exempted from disclosure under sections 552.101 and 552.103 of the Government Code.

The requestor is an investigator with the EEOC. He states he requests the information "in connection with the investigation of the . . . referenced charge." Federal law requires the EEOC to investigate charges of employment discrimination. *See* 42 U.S.C § 2000e-5(b). Section 2000e-8(a) of title 42 of the United States Code provides the following:

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<sup>1</sup>You also request a ruling on how the district should respond to a subpoena from the requestor. However, the Act only authorizes this office to render decisions on questions on the required disclosure of requested information under the Act. *See* Gov't Code § 552.306(a). Thus, this ruling does not address the district's proper response should it receive a subpoena for the information.

In connection with any investigation of a charge filed under section 2000e-5 of this title, the [EEOC] or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

*Id.* § 2000e-8(a). Thus, section 2000e-8(a) gives the EEOC and its representatives a right to access information that is relevant to a discrimination charge under the EEOC investigation. *See id.* As the requestor, an EEOC investigator, states he seeks the information in connection with the referenced pending investigation, we find the requestor has a right of access to the submitted information under section 2000e-8(a). *See Univ. of Pa. v. EEOC*, 493 U.S. 182, 192 (1990) (stating EEOC has “right to obtain” information related to investigation, “not a mere license to seek it”).

You claim this information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. You bring your section 552.101 claim in conjunction with other Texas law, specifically, section 551.104 of the Government Code.<sup>2</sup> However, state statutes are preempted by section 2000e-8(a) to the extent they thwart an EEOC investigation. *See EEOC v. City of Orange, Tex.*, 905 F. Supp 381, 382 (E.D. Tex. 1995); Attorney General Opinion JC-0280 at 1, 4 (2000) (not only does Act not prohibit Board of Medical Examiners from releasing to EEOC information material and relevant to its investigation, but Board *must* do so). Moreover, an exception to disclosure under the Act must give way to a specific statutory right of access. *See Open Records Decision Nos.* 613 at 4 (1993), 451 at 4 (1986). Accordingly, we do not address your arguments against disclosure. Instead, we conclude the district must release the information to the requestor pursuant to section 2000e-8(a).<sup>3</sup>

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)

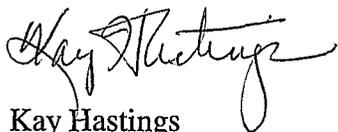
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<sup>2</sup>Section 552.101 of the Act excepts from required public disclosure information deemed confidential by law. Section 551.104 of the Government Code provides in part that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” Gov’t Code § 551.104(c).

<sup>3</sup>Should the district receive a request for the same information from another requestor who does not have a special right of access, the district should request another ruling.

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,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/sdk

Ref: ID# 353334

c: Requestor