



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2011

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

OR2011-03122

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# 410502 (TWC Tracking No. 101209-006).

The Texas Workforce Commission (the "commission") received a request for the investigative file, including intake papers, for cause number CL-10-3745-D. You state you have withheld any mediation and conciliation information under section 21.207(b) of the Labor Code pursuant to the previous determination issued to the commission in Open Records Letter No. 2009-10954 (2009). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim the submitted information is excepted from disclosure under sections 552.101, 552.116, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 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 that other statutes make confidential. Pursuant to

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.

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.

The submitted information pertains to a complaint of unlawful employment discrimination that was investigated by the commission under section 21.204 and on behalf of the Equal Employment Opportunity Commission. Thus, section 21.304 of the Labor Code is applicable to the submitted information. However, in this instance, the requestor's client is a party to the complaint. Section 21.305 of the Labor Code addresses the release of commission records to a party to a complaint filed under section 21.201 of the Labor Code and provides as follows:

(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(a), (b). You state, and the request included documentation showing, final agency action has been taken in this case. You do not inform us the complaint was resolved through a voluntary settlement or conciliation agreement. Therefore, pursuant to section 21.305 of the Labor Code, the requestor has a right of access to the commission's records relating to the complaint.

You assert portions of the submitted information are excepted from disclosure under sections 552.101 in conjunction with common-law privacy, 552.116, 552.136, and 552.147 of the Government Code. However, a specific statutory right of access prevails over the common law and general exceptions to disclosure under the Act. *See Gallagher Headquarters Ranch Dev., Ltd. v. City of San Antonio*, 269 S.W.3d 628, 637 (Tex. App.—San Antonio 2008, pet. filed) (when statute directly conflicts with common law principle or claim, statutory provision controls and preempts common law; legislature may enact legislation that preempts or supersedes common law principle); *see also* Open Records

Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor, in this instance, has a statutory right of access to the requested information, the commission may not withhold any of the submitted information under your claimed exceptions to disclosure. Accordingly, the submitted information must be released to this requestor.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.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, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 410502

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²The requestor has a special right of access to the submitted information. If the commission receives another request for this particular information from a different requestor, then the commission should again seek a decision from this office.