



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2013

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

OR2013-04438

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# 481519 (TWC Tracking No. 121221-011).

The Texas Workforce Commission (the "commission") received a request for three categories of information related to a specified investigation involving the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 3616 of title 42 of the United States Code authorizes the commission 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 that, pursuant to this authorization, the commission's Civil Rights Division ("CRD") is currently operating under a cooperative agreement with the U.S. Department of Housing and Urban Development ("HUD") in the investigation and resolution of complaints of housing discrimination. Section 301.036 of the Property Code details that the CRD shall receive,

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.

investigate, seek to conciliate, and act on complaints alleging violations of the Texas Fair Housing Act. *See* Prop. Code § 301.036. Then, upon the filing of a complaint, both federal and state law mirror each other in language and encourage conciliation to the extent feasible. *See* 42 U.S.C. § 3610(b) (providing that during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal the commission shall engage in conciliation, to the extent feasible); Prop. Code § 301.085 (providing that the commission shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in conciliation with respect to the complaint).

You state the submitted information relates to a discrimination complaint filed with the commission under its cooperative agreement. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with both federal and state law. 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. Section 552.101 encompasses section 3610 of title 42 of the United States Code, which provides, in part, as follows:

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

42 U.S.C. § 3610(d)(1). You state the submitted information is excepted from disclosure because the CRD’s efforts at conciliation are confidential under section 552.101 of the Government Code in conjunction with section 3610(d)(1) of title 42 of the United States Code. We note, however, that section 3610(d)(1) does not protect “conciliation efforts”; it protects things “said or done in the course of conciliation[.]” *Id.* Upon review, we find the submitted information consists of things neither said nor done in the course of a conciliation. Accordingly, we find the commission may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 3610(d)(1) of title 42 of the United States Code.

Section 552.101 of the Government Code also encompasses section 301.085 of the Property Code, which provides in pertinent part as follows:

(e) Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

(f) After completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.

Prop. Code § 301.085(e), (f). You assert the submitted information is excepted from disclosure because the CRD's efforts at conciliation are confidential under section 552.101 of the Government Code in conjunction with section 301.085(e) of the Property Code. We note, however, section 301.085(e) also does not protect "conciliation efforts"; it protects "statements made or actions taken in the conciliation[.]" *Id.* Upon review, we find the submitted information consists of statements neither made nor actions taken in a conciliation. Accordingly, we find the commission may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 301.085(e).

Section 552.101 of the Government Code also encompasses section 21.304 of the Labor Code, which relates to public release of information obtained by the commission, provides as follows:

An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except in compliance with section 21.305 and as necessary to the conduct of a proceeding under this chapter.

Labor Code § 21.304. We note the submitted information pertains to a complaint of unlawful employment discrimination that was filed with the commission. Thus, the submitted information is confidential under section 21.304 of the Labor Code. However, the requestor is an attorney representing a party to the complaint filed under section 21.201 of the Labor Code. Section 21.305 of the Labor Code concerns the release of records to a party to a complaint filed under section 21.201 of the Labor Code and provides as follows:

(a) Except as provided by Subsection (c), 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) Except as provided by Subsection (c), 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.

(c) Notwithstanding Section 552.023, Government Code, the following information is not considered public information for the purposes of [the Act], and may not be disclosed to a party to a complaint filed under Section 21.201:

(1) identifying information of persons other than the parties and witnesses to the complaint;

(2) identifying information about confidential witnesses, including any confidential statement given by the witness;

(3) sensitive medical information about the charging party or a witness to the complaint that is:

(A) provided by a person other than the person requesting the information; and

(B) not relevant to issues raised in the complaint, including information that identifies injuries, impairments, pregnancies, disabilities, or other medical conditions that are not obviously apparent or visible;

(4) identifying information about a person other than the charging party that is found in sensitive medical information regardless of whether the information is relevant to the complaint;

(5) nonsensitive medical information that is relevant to the complaint if the disclosure would result in an invasion of personal privacy, unless the information is generally known or has been previously reported to the public;

(6) identifying information about other respondents or employers not a party to the complaint;

(7) information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes; and

(8) identifying information about a person on whose behalf a complaint was filed if the person has requested that the person's identity as a complaining party remain confidential.

(d) In this section, "identifying information" has the meaning assigned by Section 32.51, Penal Code.

Labor Code § 21.305. In response to a request for additional information this office made pursuant to section 552.303 of the Government Code, the commission informs our office that (1) final agency action has been taken with respect to the complaint and (2) the complaint was not resolved through a voluntary settlement or conciliation agreement.² We note subsection 21.305(c) identifies eight categories of information not considered to be public information for the purposes of the Act and that may not be disclosed to a party to a complaint filed under section 21.201. Pursuant to section 21.305, the requestor generally has a right of access to the commission's records relating to the complaint. However, the commission must withhold any information subject to subsection (c) under section 552.101 in conjunction with section 21.305(a).

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted tax return information, which we have marked, is confidential under section 6103(a) of title 26 of the United States Code

²See Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

and must be withheld under section 552.101 of the Government Code. We note, as a federal law, section 6103(a) preempts any conflicting state provisions, including section 21.305 of the Labor Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Accordingly we find the information we have marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 form and supporting documents in response to this request for information would be for purposes other than for enforcement of the referenced federal statutes. Section 1324a, as a federal law, preempts any conflicting state provisions, including section 21.305 of the Labor Code. *See City of Orange*, 905 F. Supp at 382. Accordingly, the submitted I-9 form and supporting documents we have marked are excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. *See Gov't Code* § 552.130(a)(1). We find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. We find the submitted motor vehicle record information is generally excepted under section 552.130 of the Government Code. However, we note in this instance the requestor has a statutory right of access to the requested information.

A specific statutory right of access prevails over general exceptions to disclosure. Open Records Decision No. 451 at 4 (1986). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 21.305 of the Labor Code and the confidentiality provided under section 552.130 of the Government Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails over the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov't Code* § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, section 21.305 generally applies to any type of record contained in commission complaint records. Section 552.130 specifically protects motor vehicle record information. Thus, we find the confidentiality provided by section 552.130 is more specific than the

general right of access provided by section 21.305. Accordingly, the commission must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

You assert the information at issue is excepted under section 552.101 of the Government Code in conjunction with common-law privacy. Further, you state the commission will redact information under section 552.137 of the Government Code, pursuant to Open Records Decision No. 684 (2009), and social security numbers pursuant to section 552.147(b) of the Government Code.³ Additionally, you seek to withhold an insurance policy number under section 552.136 of the Government Code. We note, however, sections 552.136, 552.137, and 552.147 are general exceptions to disclosure under the Act and a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). Furthermore, although you raise common-law privacy for some of the submitted information, a specific statutory right of access also prevails over the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, because the requestor has a statutory right of access to the requested information, the commission may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy, or sections 552.136, 552.137, and 552.147 of the Government Code.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The submitted I-9 form and supporting documents we have marked are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. The commission must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The commission must withhold the

³As you acknowledge, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision, unless authorized to release the information according to applicable law. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

information subject to section 21.305(c) of the Labor Code. The commission must release the remaining information.⁴

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 481519

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the requestor has a special right of access to the information being released, if the commission receives another request for this information from an individual other than this requestor, the unit must again seek a decision from this office.