



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 17, 2015

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

OR2015-07484

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# 560401 (TWC Tracking No. 150128-013).

The Texas Workforce Commission (the "commission") received a request for all information created during a specified time period pertaining to a specified case involving the requestor.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note some of the submitted information is not responsive to the present request because it was created after the date of the request. This ruling does not address the public

¹We note the requestor clarified her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²We 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.

availability of the non-responsive information, which we have marked, and the commission need not release it in response to this request.

Section 3616 of title 42 of the United States Code authorizes the U.S. Department of Housing and Urban Development (“HUD”) 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, pursuant to this authorization, the commission’s Civil Rights Division (“CRD”) is currently operating under a cooperative agreement with HUD in the investigation and resolution of complaints of housing discrimination. Section 301.063 of the Property Code states the commission shall receive, investigate, seek to conciliate, and act on complaints alleging violations of the Texas Fair Housing Act. *See* Prop. Code § 301.063. 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 during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal the Secretary of HUD shall, to the extent feasible, 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 housing discrimination complaints 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 section 301.085 of the Property Code. 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 301.085 of the Property Code, which provides, in pertinent part:

(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). We note section 301.085(f) mandates release of the final investigative report upon request of a party to the complaint. In this instance, you state the investigation of the complaint at issue is still ongoing, and the commission has taken no final action in this case. You assert the submitted responsive information is confidential under section 301.085(f) of the Property Code. However, we find section 301.085(f) does not make information confidential for purposes of the Act; instead, it only provides that the

commission must make available certain information to the aggrieved person and the respondent after the commission's investigation is completed. *See id.*; Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, none of the information at issue is confidential under section 301.085(f), and the commission may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 301.085(f). Upon review, however, we find the information we have marked consists of statements made or actions taken during conciliation. You do not indicate you have received the written consent of all concerned persons. Therefore, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 301.085(e) of the Property Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ Gov't Code § 552.137(a)-(c). We note section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the commission must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 301.085(e) of the Property Code. The commission must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The commission must release the remaining responsive 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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note the requestor has a right of access to some of the information being released to her. *See* Gov't Code §§ 552.023(a), .137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', is written over a horizontal line.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 560401

Enc. Submitted documents

c: Requestor
(w/o enclosures)