



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 7, 2015

Ms. Nancy Fahy  
Assistant General Counsel  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2015-13640

Dear Ms. Fahy:

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# 570303 (TWC Tracking No. 150417-009).

The Texas Workforce Commission (the "commission") received a request for the contents of a specified case file. 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 information.

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 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 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:

(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(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 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).

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 the doctrines of common-law and constitutional privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not

related to a financial transaction between an individual and a governmental body is intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we agree the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information you marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the remaining information at issue may not be withheld under section 552.101 in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find none of the remaining information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the commission may not withhold the remaining information at issue under section 552.101 on the basis of constitutional privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find the information we have marked constitutes motor vehicle record information. Therefore, the commission must withhold the information we have marked under section 552.130 of the Government 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). We note the e-mail addresses at issue are not of types excluded by subsection (c). Accordingly, the commission must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consents to their public disclosure.

In summary, the commission must withhold the information, and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the information we marked under section 552.130 of the Government Code. The commission must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consents to their public disclosure. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/eb

Ref: ID# 570303

Enc. Submitted documents

c: Requestor  
(w/o enclosures)