



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2015

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

OR2015-14768

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# 572079 (TWC Tracking No. 150430-010).

The Texas Workforce Commission (the "commission") received a request for an Equal Employment Opportunity Commission ("EEOC") complaint filed by a named individual, and all associated records pertaining to the processing and final outcomes of the complaint. 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.¹

Section 3616 of title 42 of the United States Code authorizes the United States 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. The commission states, 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 301.036 of the Property Code details that the CRD shall receive, investigate, seek to conciliate, and act on complaints alleging violations of the

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.

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).

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 information other statutes make confidential, such as section 301.085(e) of the Property Code, which provides the following:

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.

Prop. Code § 301.085(e). We understand the commission to argue the submitted information is excepted from disclosure because the CRD’s efforts at conciliation are confidential under section 552.101 in conjunction with section 301.085(e) of the Property Code. We note, however, section 301.085(e) does not protect “conciliation efforts”; it protects “[s]tatements made or actions taken in the conciliation[.]” *Id.* Upon review, we find the submitted information does not consist of statements made or actions taken in a conciliation for the purposes of section 301.085(e). 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, we note the requestor states in the request that a party to the complaint notified the commission that she authorized the release of the records at issue to the requestor. 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.

Labor Code § 21.305(a)-(b). The commission states no final action has been taken in this case. Further, the commission states that it has no knowledge of a complaint being filed in federal court. Based on your representations, we conclude the submitted information must be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 21.304 of the Labor Code.

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, 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 572079

Enc. Submitted documents

c: Requestor
(w/o enclosures)