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May 1, 2014

***Via E-Mail***

Aman Batheja  
The Texas Tribune  
823 Congress Avenue, #1400  
Austin, TX 78701

RE: Public Records Act Request

Dear Mr. Batheja:

This letter is in response to your correspondence dated April 7, 2014, that was received in the Attorney General's Office on the same date, in which you sought various records pursuant to the Public Records Act (PRA) as set forth in Government Code section 6250 et seq. Specifically, you requested:

*a spreadsheet, database or delimited text file(s) with the following fields for each employee: Name, (split last, rest if possible), title, department, race, gender and gross annual salary.*

The race/ethnicity and gender information you have requested is exempt from disclosure and therefore we decline your request as it is currently cast. The gender and ethnic/race information of state employees is personally identifying information for which those employees have a constitutional right of privacy. (Cal. Const., art. 1, § 1.) State agencies obtain this information from their new employees under a promise that the information would remain confidential for research and statistical use "to yield the data and analysis necessary for the evaluation of equal employment opportunity within the state civil service." (Gov. Code, §§ 19705, 19792.) A state agency may refuse to disclose information acquired in confidence if "there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure." (Evidence Code, § 1040, subd. (b)(2).)

There is a legitimate interest in evaluating the gender and race of state employees, but the State's access to accurate raw data necessary for this analysis is contingent on the continued voluntary disclosure of this information by state employees. Disclosure of the race and gender information along with the employees' identity would chill employee willingness to provide the information, preventing DOJ from obtaining the information necessary to effectively evaluate the diversity of the DOJ workforce and to fulfill state and federal reporting requirements. Therefore,

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the interest in disclosing the raw data you have requested (e.g., the employees' names with gender and race information) is greatly outweighed by the public interest in our employees' continued voluntary submission of the information. (Gov. Code, § 6254, sub. (k), incorporating Evid. Code, § 1040, CA Const., art. 1, § 1; Gov. Code, § 6255 .)

In the interest of transparency in government and DOJ's continued interest in diversity and salary parity, we are willing to provide you some aggregate data about the gender and median salary for a variety of DOJ job classifications. With the exception of our special agents, we could also provide you with the names of DOJ employees, and job classifications and corresponding salary ranges.

We decline to produce records that identify any members who are DOJ Special Agents. DOJ has consistently maintained as confidential the names of its agents who are employed as peace officers as provided in Penal Code section 830.1, subdivision (b) and who, among other duties conduct covert criminal investigations. DOJ withholds this identifying information because the public interest served by not disclosing such records clearly outweighs the public interest in disclosing such records. (Gov. Code, §§ 6255, 6254, subd. (k), incorporating Pen. Code §832.7 [peace officer personnel records are confidential]) and Cal. Const., art. I, § 1.) In reaching this conclusion, the Department has balanced the public's right to open government and the Department's obligation to ensure officer safety. (See *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278.)

Please let us know if you would like us to provide any information about DOJ employees other than gender and ethnic race information we referenced above.

Sincerely,



Mary Sayre  
Chief  
Personnel Programs

For KAMALA D. HARRIS  
Attorney General