



February 14, 2002

Ms. Cynthia B. Garcia
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-0726

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158630.

The City of Fort Worth (the “city”) received a request for all documents contained within the Human Relations Commission (the “HRC”) file of a specified case. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code, in conjunction with sections 21.303, 21.304 and 21.305 of the Texas Labor Code, as well as sections 327.9 and 327.10 of title 40 of the Texas Administrative Code and sections 159.002 and 159.005 of the Texas Occupations Code. You also claim section 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See Gov’t Code § 552.304.*

You inform us that the HRC was created pursuant to title 21 of the Labor Code. *See Labor Code § 21.152* (providing for the creation of local commissions). We conclude that the HRC is a local agency authorized by sections 21.152 et. seq. of the Labor Code to investigate complaints, as provided by section 21.204 of the Labor Code. Section 21.204 relates to investigations by the Texas Commission on Human Rights (“TCHR”). You claim that sections 21.303, 21.304, and 21.305 of the Labor Code except the requested information from disclosure.

We note that Attorney General Opinion JM-275 (1984) addresses whether the confidentiality provisions of the Labor Code are applicable to local human relations commissions. Section 21.304 of the Labor Code prohibits “[a]n officer or employee of the commission” from disclosing to the public information obtained under section 21.204. “Commission” in chapter 21 refers to the TCHR. Labor Code § 21.002(2). Thus, this provision does not apply

directly to local commissions. See Attorney General Opinion JM-275 (1984). We find that such confidentiality protections under section 21.304 are maintained when protected information is transferred from the state commission to a local commission as a result of a referral of a complaint by the TCHR to a local commission. *Id.* at 2. However, “any protection from disclosure of information related to employment discrimination complaints which are made solely pursuant to the local ordinances must stem from the exceptions found within the Texas Open Records Act.” *Id.* After reviewing the submitted information, we find that the complainant made her complaint directly to the HRC and the EEOC and that the investigation of the complaint was conducted by the local HRC in accordance with HRC’s Fair Employment Ordinance No. 7278.¹ The city does not state and the information does not show that this particular investigation involved a referral from the TCHR. Therefore, the protections afforded by the Labor Code do not apply to this investigation and any protection from disclosure rests solely with the Public Information Act.

You also argue that section 552.102 protects the personnel file information of employees contained in the HRC’s file. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). However, this provision concerns information in the personnel files of employees of a governmental body. The submitted information is not the personnel file information of government employees. Thus, section 552.102 is not applicable.

We note that social security numbers are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* See Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the city should ensure that these numbers were not obtained or are maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990.

¹ Section 21.151 provides that “[a] political subdivision may adopt and enforce an order or ordinance that prohibits a practice that is unlawful under this chapter, another state law, or federal law.”

In conclusion, except for social security numbers that may be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 42 U.S.C. § 405(c)(2)(C)(viii)(I), the responsive information must be released in its entirety.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

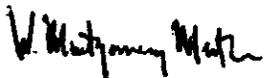
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 158630

Enc: Submitted documents

c: Ms. Dorothy Williams
1322 East Davis Avenue
Fort Worth, Texas 76104
(w/o enclosures)