



February 19, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-0800

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158072.

The City of Fort Worth (the "city") received a request for copies of all documents on file with the Fort Worth Human Relations Commission (the "FWHRC") concerning a named individual. You inform us that the city has released some of the requested information, and claim that a portion of the submitted information that you have highlighted is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's failure to comply with section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking for an attorney general decision as to whether requested information is excepted from disclosure. Pursuant to section 552.301(b), a governmental body must ask this office for a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, section 552.301(e) provides, among other requirements, that a governmental body must submit to this office within fifteen business days of receiving an open records request written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(A), (D), (2). The city received the information request on November 1, 2001. The city requested a decision from this office by a letter postmarked November 20, 2001, and submitted to this office its comments regarding the applicability of its claimed exception and a copy of the information at issue by a letter postmarked November 27, 2001, which are the thirteenth and sixteenth business days, respectively, following the date of the request. *See id.* § 552.308 (concerning timeliness of action by United States or interagency mail). Thus, the city failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The applicability of section 552.101 presents a compelling reason sufficient to overcome the section 552.302 presumption. *See, e.g.*, Open Records Decision No. 150 (1977). Therefore, we will address your claimed exception to disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You inform us that the FWHRC was created pursuant to title 21 of the Labor Code. *See* Labor Code § 21.152 (providing for the creation of local commissions). Further, you inform us that pursuant to title 21 of the Labor Code and by agreement with the Texas Commission on Human Rights (the "TCHR"), the FWHRC has deferred jurisdiction over the subject matter of the complaint from which the information at issue is derived. *See id.* §§ 21.152-154. Thus, we conclude that the FWHRC is a local commission 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 Commission on Human Rights.

Section 21.304 of the Labor Code provides:

An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter.

Section 21.305 of the Labor Code is entitled "Access to Commission Records" and provides:

(a) 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) 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.

The Texas Commission on Human Rights has adopted rules governing access to commission records at sections 327.9 and 327.10 of title 40 of the Texas Administrative Code. Section 327.9, which provides for access to commission records by a party to a complaint in certain circumstances, provides:

Pursuant to the limitations established by the Texas Labor Code, §§ 21.304-21.305 (formerly Texas Revised Civil Statutes Annotated Article 5221k, § 8.02(a)), the executive director shall, on written request of a party to a complaint filed under the Texas Labor Code, § 21.201 (formerly Texas Revised Civil Statutes Annotated Article 5221k, § 6.01(a)), allow the party access to the commission's records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:

(1) following the final action of the commission, a party to the complaint or the party's attorney certifies in writing that a civil action is to be filed under the Act within 60 days from the date of receipt of the commission's notice of right to file a civil action or a civil action under the Act is pending in state court; or

(2) a party to the complaint or the party's attorney certifies in writing that a civil action relating to the complaint is pending in federal court alleging a violation of federal law.

40 TAC § 327.9. You inform us that the information at issue is compiled and maintained by FWHRC pursuant to subchapter D of Title 21 of the Labor Code. You state that "there is not a civil action filed in federal court alleging a violation of federal law relating to this complaint. If there is such a complaint, it has not been brought to the attention of the city." Thus, you have provided no information establishing that the requestor, as a party or an attorney representing a party to a complaint, has certified in writing that a civil action relating to a complaint under section 21.201 of the Labor Code is pending in state court or is to be filed within 60 days from the date of receipt of the commission's notice of right to file a civil action, or is pending in federal court alleging a violation of federal law. Accordingly, section 327.9 does not provide the requestor with a right of access to the information at issue. For non-party requestors, the commission's rules further provide at section 327.10 of title 40 of the Texas Administrative Code as follows:

(a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the Texas Labor Code, §§ 21.201-21.207 (formerly Texas Revised Civil Statutes Annotated Article 5221k, § 6.01), except as necessary to the conduct of a proceeding under this Act.

(b) No commissioner or employee of the commission may make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, alternative dispute resolution, conciliation, or persuasion, whether or not there is a determination of reasonable cause.

40 TAC § 327.10. You further inform us that the FWHRC file regarding this information is closed, and that the city has received no written consent from the complainant or respondent authorizing the release of the information at issue. Accordingly, section 327.10 does not provide the requestor with a right of access to the information at issue. Therefore, based upon your arguments and our review of the submitted information, we conclude that the highlighted information is confidential under section 21.304 of the Labor Code, and must therefore be withheld under section 552.101.

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).

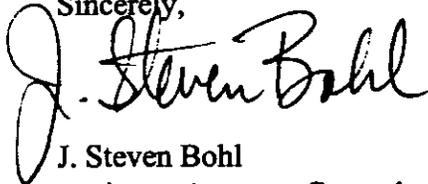
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 158072

Enc: Submitted documents

c: Ms. Samantha E. Clark
Lynn Tillotson & Pinker -
750 North St. Paul, Suite 1400
Dallas, Texas 75201
(w/o enclosures)