



August 1, 2002

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

OR2002-4228

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# 166553.

The City of Fort Worth (the "city") received a request for copies of records pertaining to a specified filed discrimination charge. You state that you have released the majority of the responsive information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code § 552.301(b)*. You state that the city received the written request for information on May 9, 2002. Therefore, the city had until May 23, 2002 to request a decision from our office regarding the requested information. However, the city did not request a decision concerning the requested information until May 24, 2001, more than ten business days after the date that the city received the request. Accordingly, we conclude that the city failed to comply with the procedural requirements of section 552.301 of the Government Code. *See Gov't Code § 552.301(b)*.

Because the city failed to request a decision within ten business days of receiving the request, the information at issue is presumed public. *See Gov't Code § 552.302; see also Hancock*

*v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest to withhold the information in order to overcome this presumption. *See id.* Normally, a governmental body demonstrates a compelling interest by showing that some other source of law makes the information confidential or that the release of the requested information implicates third party interests. *See* Open Records Decision No. 150 at 2 (1977). Since the city claims that the submitted information is excepted from disclosure under section 552.101, we address its claim with regard to the information.

You claim that portions of Exhibit C are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 21 of the Labor Code.<sup>1</sup> You state that the city's Human Relations Commission (the "HRC") was created pursuant to title 21 of the Labor Code. *See* Labor Code § 21.152 (providing for the creation of local commissions). You explain that the Texas Commission on Human Rights (the "TCHR") has deferred jurisdiction over the subject matter of the complaint at issue to the HRC. *See* Labor Code §21.154; *see also* 40 Texas Administrative Code (the "T.A.C.") § 325.4 (authorizing cooperative agreements between TCHR and local commissions). The HRC is a local agency authorized by sections 21.152 of the Labor Code to investigate complaints, as provided by section 21.204 of the Labor Code. *See* Labor Code § 21.152. Section 21.204 relates to investigations by the TCHR.

You claim that sections 21.303, 21.304, and 21.305 of the Labor Code make portions of Exhibit C confidential. Section 21.304 concerns the release of TCHR information to the public and 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 as necessary to the conduct of a proceeding under this chapter.

Labor Code § 21.304. However, in this case, we understand that the requestor represents a party to a complaint filed under section 21.201 of the Labor Code. Section 21.305 concerns the release of TCHR records to a party to a complaint filed under section 21.201 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.

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

(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.

Labor Code § 21.305. The TCHR has adopted rules governing access to section 327.9 records by a party to a complaint at section 327.9 of title 40 of the T.A.C. This provision 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 T.A.C. § 327.9. Section 327.10 of title 40 also governs the public's access to TCHR records. Section 327.10 provides:

(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 T.A.C. § 327.10. Although you did not raise section 21.207(b) of the Labor Code, this provision is similar to the rule you raise regarding the public's access to TCHR records. Section 21.207(b) reads as follows:

(b) Without the written consent of the complainant and respondent, the commission, its executive director, or its other officers or employees may not disclose to the public information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, conciliation, or persuasion, regardless of whether there is a determination of reasonable cause.

Labor Code § 21.207(b). You state that the requested information was compiled by and is maintained according to chapter 21 of the Labor Code. You also state that Exhibit C consists of information regarding efforts at mediation or conciliation between the parties that is confidential under chapter 21. Finally, you state that the city has not received written consent from both parties to release the information in Exhibit C that has been withheld from the requestor. Based on our review of your representations and the information in Exhibit C, we conclude that the information that you have not already released to the requestor from that exhibit is confidential under section 21.207(b) and, therefore, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

You also claim that Exhibit D is privileged medical information that is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. The MPA provides that "a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter." Occupations Code § 159.002(b). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). Based on our review of your representations and Exhibit D, we find that no portion of that exhibit constitutes medical records that are subject to the access provisions of the MPA. Accordingly, we conclude that the city may not withhold any portion of Exhibit D pursuant to section 552.101 of the Government Code in conjunction with the MPA.

However, we note that two of the documents in Exhibit D contain a social security number that may be confidential under federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain this social security number. Therefore, we have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. 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 the social security number at issue, the city should ensure that the number was not obtained and is not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the city must withhold the information in Exhibit C that has not already been released to the requestor pursuant to section 552.101 of the Government Code in conjunction with section 21.207(b) of the Labor Code. Two social security numbers in Exhibit D may be confidential under federal law. The city must release the remaining information in Exhibit D to the requestor.

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.

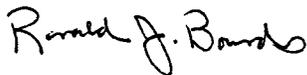
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 166553

Enc. Submitted documents

cc: Ms. Stacey Calvert  
Littler Mendelson, P.C.  
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(w/o enclosures)