



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 14, 2003

Mr. Bill Ainsworth  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2003-3243

Dear Mr. Ainsworth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181012.

The City of Corpus Christi (the "city") received a request for a complete copy of all materials from the Corpus Christi Human Relations Commission ("CCHRC") investigative file regarding a lawsuit filed by the requestor's client, including all materials from the Equal Employment Opportunity Commission ("EEOC") file. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted sample of information.<sup>2</sup>

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<sup>1</sup>Although you raised section 552.103 as a possible exception to the disclosure of the requested information, you have not provided this office with arguments applying that exception to the submitted information. Therefore the submitted information is not excepted from disclosure under section 552.103. See Gov't Code §§ 552.301(e), .302.

<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.101 exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Title VII states in relevant part:

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the [Equal Employment Opportunity] Commission, alleging that an employer . . . has engaged in an unlawful employment practice, the [EEOC] shall serve a notice of the charge . . . and shall make an investigation thereof. . . . Charges shall not be made public by the [EEOC].

42 U.S.C. § 2000e-5(b). In this instance CCHRC processed these complaints on behalf of the EEOC.

The EEOC is authorized by statute to utilize the services of state and local fair employment practices agencies to assist in meeting its statutory mandate to enforce laws prohibiting discrimination. *See* 42 U.S.C. § 2000e-4(g)(1). You have previously informed this office that the CCHRC is a local agency that is authorized by section 21.152 of the Labor Code to investigate complaints of employment discrimination as provided by section 21.204 of the Labor Code, and that it has a contract and “work sharing agreement” with the EEOC. *See* Labor Code § 21.152 (providing for the creation of local commissions); 40 T.A.C. § 325.4 (authorizing cooperative agreements between Texas Commission on Human Rights (the “commission”) and local commissions). Section 21.204 provides for investigations by the commission. The EEOC and the commission can defer jurisdiction to local commissions. Labor Code § 21.154.

Section 21.304 of the Labor Code concerns the release of commission 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.

Section 327.10 of title 40 also governs the public’s access to commission records.<sup>3</sup>

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<sup>3</sup>Section 327.10 provides 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.

However, in this case, we note that the requestor represents a party to a complaint filed under section 21.201 of the Labor Code. Section 21.305 of the Labor Code concerns the release of commission 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.

(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 commission has adopted rules governing access to commission records by a party to a complaint at section 327.9 of title 40 of the Texas Administrative Code. 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

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(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.

Section 21.207(b) of the Labor Code 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.

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. You have indicated that the information at issue was compiled and maintained by the CCHRC pursuant to its processing of an employment discrimination claim. The requestor informs this office that the CCHRC issued its determination in this cause and forwarded that determination to the EEOC, which issued its Dismissal and Notice of Rights on January 8, 2002. We are further informed that a lawsuit is currently pending in state court. Therefore, we find that the EEOC has taken final action and the requestor therefore should be given access to the requested information. See Labor Code § 21.305(b)(1); 40 T.A.C. § 327.9(1). The city must release the information 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 Dep't of Pub. 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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 181012

Enc. Submitted documents

c: Mr. Frederick J. McCutcheon  
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(w/o enclosures)