



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 14, 2003

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

OR2003-3261

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# 181000.

The City of Fort Worth (the "city") received a request for information relating to the requestor's Fort Worth Human Relations Commission case. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. In this instance, some of the submitted information is subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
  
- (b) 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.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). Medical records must be released upon 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) 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). Medical records may be released only as provided under the MPA. *See* Open Records Decision No. 598 (1991). We have marked the submitted information that is governed by the MPA. The city must not release that information unless the MPA permits the city to do so.

Next, we address your claim under section 552.101 of the Government Code with regard to the rest of the submitted information. You inform us that the Fort Worth Human Relations Commission (the "city commission") was created under chapter 21 of the Labor Code. *See* Labor Code § 21.152 (providing for creation of local commissions). You state that in compliance with chapter 21, both the federal Equal Employment Opportunity Commission (the "EEOC") and the Texas Commission on Human Rights (the "state commission") have deferred jurisdiction to hear complaints to the city commission by written agreements. *See* Labor Code §21.154 (authorizing deferral of jurisdiction to local commissions); *see also* 40 T.A.C. §325.4 (authorizing cooperative agreements between state and local commissions). Under section 21.152 of the Labor Code, the city commission is a local agency authorized to investigate and resolve complaints. *See* Labor Code §§ 21.154 (authorizing local commission to which complaint is referred or jurisdiction is deferred to receive, investigate, conciliate, or rule on complaint), .204 (relating to investigation of complaint by state commission).

You claim that sections 21.303, 21.304, and 21.305 of the Labor Code except the remaining requested information from disclosure. Section 21.304, which relates to public release of information obtained by the state commission, 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. Section 327.10 of title 40 of the Texas Administrative Code also governs the public's access to state commission records. 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.

(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. Moreover, section 21.207(b) of the Labor Code, which you have not raised, is similar to the rule that you raise regarding public access to state commission records. Section 21.207 provides in part:

(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).

In this instance, however, the requestor is a party to a complaint filed under section 21.201 of the Labor Code. *See* Labor Code § 21.201(a) (person claiming to be aggrieved by unlawful employment practice or person's agent may file complaint with state commission). Section 21.305 of the Labor Code, which is applicable to the release of state commission records to a party to a complaint filed under section 21.201, 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. At section 327.9 of title 40 of the Texas Administrative Code, the state commission has adopted rules that govern access to its records by a party to a complaint. Section 327.9 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. We note that the rest of the submitted information relates to city commission Charge No. 31AA2118 and EEOC Charge No. 31AA20118. You inform us that the city commission compiled and maintains this information under subchapter D of chapter 21 of the Labor Code. You state that final action has not been taken in the case to which the information pertains, and the city has not been given notice that a civil action is pending in federal court. Based on your representations and our review of the information at issue, we conclude that the rest of the submitted information is confidential under section 21.305 of the Labor Code and therefore is excepted from disclosure under section 552.101 of the Government Code.

In summary, the city must not release the submitted information that is subject to the MPA unless the MPA permits the city to do so. The city must withhold the rest of the submitted information under section 552.101 of the Government Code in conjunction with section 21.305 of the Labor Code.

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).

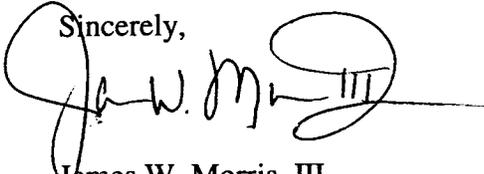
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 181000

Enc: Submitted documents

c: Ms. Elvira Galvan  
133 N.W. Suzanne Terrace  
Burleson, Texas 76028  
(w/o enclosures)