



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2004

Ms. Maleshia B. Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-7978

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209844.

The City of Fort Worth (the "city") received a request for the requestor's case file. You state that the city will release a portion of the requested information to the requestor. However, you claim that some of the remaining requested information 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 address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You failed to request a decision from this office within ten business days of receiving the request for information. Additionally, you did not provide this office with the required documents within fifteen business days. Thus, the city has failed to comply with section 552.301 of the Government Code.

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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Therefore, we will address your arguments under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You claim that some of the submitted information in Exhibit D is excepted from disclosure pursuant to section 552.101 in conjunction with sections 21.303, 21.304, and 21.305 of the Labor Code.

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 Workforce Commission Civil Rights Division (the "state commission") have deferred jurisdiction to hear complaints to the city commission by written agreements.¹ *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).

Section 21.304, which relates to public release of information obtained by the state commission, provides as follows:

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

¹Although you reference the Texas Commission on Human Rights (the "TCHR"), we note that the TCHR has been abolished and that its duties are now performed by the state commission. *See* Act of May 28, 2003, 78th Leg., R.S., ch. 302, § 1, 2003 Tex. Gen. Laws 1279.

Labor Code § 21.304. In this instance, 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 concerns the release of the state commission records to a party to a complaint filed under section 21.201 and provides:

(a) The [state] commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to [state] 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 [state] commission records:

(1) after the final action of the [state] 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 [state] commission's records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:

(1) following the final action of the [state] 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 [state] 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 state that the city has not received notice or written certification from the requestor or her authorized representative that a civil action has been or will be filed

in relation to the complaint. Therefore, the city is not required to allow the requestor access to the submitted information in Exhibit D under section 21.201(b).

Section 327.10 of title 40 also governs public access to state commission records and provides:

(a) No officer or employee of the [state] commission may make public any information obtained by the [state] 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 [state] 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, we note that section 21.207(b) of the Labor Code provides in part:

(b) Without the written consent of the complainant and respondent, the [state] 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 inform us that Exhibit D consists of information regarding efforts at mediation or conciliation between the parties to the dispute, and you state that the city has not received written consent of both parties to release the information in Exhibit D that has been withheld from the requestor. Based on your representations and our review, we determine that the information in Exhibit D that the city has not already released to the requestor is confidential pursuant to section 21.207(b) of the Labor Code and must be withheld under section 552.101 of the Government Code.

Next, you argue that the information in Exhibit E is excepted from disclosure under section 552.101 in conjunction with title 26 of section 6103(a) of the United States Code. Section 6103(a) makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's

liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part, vacated in part on other grounds*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find that the information in Exhibit E was not gathered by the Internal Revenue Service in accordance with title 26 of section 6103(a) of the United States Code. Accordingly, you may not withhold Exhibit E on this basis.

However, the social security numbers in Exhibit E must be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See Open Records Decision No. 622 (1994)*. These amendments 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 id.* We have no basis for concluding that the social security numbers in Exhibit E are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act ("Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. We also note that under section 552.023 of the Government Code a person or a person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, the requestor has a special right of access to her social security number information pursuant to section 552.023 of the Government Code and it must be released in this instance.

Additionally, we note that section 552.101 of the Government Code also encompasses the common law right of privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common law privacy. *See Open Records Decision Nos. 600 (1992), 545 (1990)*. Therefore, the personal financial information we have marked in Exhibit E must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. We note that the requestor has a special right of access to her personal financial information pursuant to section 552.023 of the Government Code and it must be released in this instance.

In summary, we conclude that: 1) the information in Exhibit D that the city has not already released to the requestor must be withheld under section 552.101 of the Government Code in conjunction with section 21.207(b) of the Labor Code; 2) except for the requestor's that must be released, the social security numbers in Exhibit E may be confidential under federal

law; and 3) the information we have marked in Exhibit E must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. All remaining information must be released.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 209844

Enc: Submitted documents

c: Ms. E. Jackelyne Rodriquez
2601 Hawthorn Drive
Eules, Texas 76039
(w/o enclosures)