



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2007

Ms. Kelly E. Pagan  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2007-12084

Dear Ms. Pagan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 289207.

The City of Fort Worth (the "city") received a request for information relating to a complaint of employment discrimination filed by the requestor. You claim that some of 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. We also have considered the comments that we received from an attorney for Lockheed Martin Corporation ("Lockheed").<sup>1</sup> *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

You indicate that the submitted information was compiled by the Fort Worth Community Relations Department (the "department") in the course of its investigation of the requestor's complaint. We understand that the department was created under chapter 21 of the Labor Code. *See* Labor Code § 21.152 (providing for creation of local commissions). You inform us that pursuant to chapter 21, both the federal Equal Employment Opportunity Commission (the "EEOC") and the Texas Workforce Commission Civil Rights Division (the "TWC")

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<sup>1</sup>We note that Lockheed's attorney has submitted information that Lockheed seeks to have withheld from disclosure. This decision addresses only the information that the city submitted to this office in requesting this decision. *See* Gov't Code § 552.301(e)(1)(D).

have deferred jurisdiction to hear complaints to the department.<sup>2</sup> *See id.* § 21.154 (authorizing deferral of jurisdiction to local commissions); *see also* 40 T.A.C. § 819.76 (authorizing workshare agreements between the TWC and local commissions). Thus, under section 21.152 of the Labor Code, the department is a local agency authorized to investigate and resolve complaints of employment discrimination. *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 complaints by the TWC).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 21.304 of the Labor Code, which relates to public release of information obtained by the TWC, provides as follows:

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

Labor Code § 21.304. In this instance, however, the requestor was a party to a complaint filed under section 21.201 of the Labor Code. *See id.* § 21.201(a) (person claiming to be aggrieved by unlawful employment practice or person’s agent may file complaint with TWC). Section 21.305 of the Labor Code concerns the release of the TWC’s records to a party to a complaint filed under section 21.201 and provides:

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

(1) after the final action of the [TWC]; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

*Id.* § 21.305. At section 819.92 of title 40 of the Texas Administrative Code, the TWC has adopted rules that govern access to its records by a party to a complaint. Section 819.92 provides in part:

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<sup>2</sup>We note that you have provided copies of the department’s workshare agreements with the EEOC and the TWC.

(a) Pursuant to Texas Labor Code § 21.304 and § 21.305, [TWC] shall, on written request of a party to a perfected complaint under Texas Labor Code § 21.201, allow the party access to [TWC's] records, unless the perfected complaint has been resolved through a voluntary settlement or conciliation agreement:

(1) following the final action of [the TWC]; or

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

40 T.A.C. § 819.92(a). You inform us that the department has completed its investigation of the requestor's complaint and has issued a "no cause" letter. We therefore conclude that the requestor generally has a right of access to the submitted records of the department's investigation under section 21.305 of the Labor Code and section 819.92 of title 40 of the Texas Administrative Code. Thus, because exceptions to disclosure under the Act are generally not applicable to information that other statutes make public, we need not address the city's arguments against disclosure or those that we received from Lockheed. *See* Open Records Decision Nos. 623 at 3 (1994) (Act's exceptions to disclosure generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (Act's exceptions cannot impinge on statutory right of access to information), 525 at 3 (1989) (as general rule, Act's exceptions do not apply to information expressly made public by other statutes), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act).

We note, however, that the submitted documents contain information pertaining to the department's mediation and conciliation efforts. Section 21.207(b) of the Labor Code provides in part:

(b) Without the written consent of the complainant and respondent, the [TWC], 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.

Lab. Code § 21.207(b). We have marked information relating to efforts at mediation or conciliation. You do not inform us that the city has received the written consent of both parties to release that information. We therefore conclude that the marked information is confidential under section 21.207 of the Labor Code and must be withheld from the requestor under section 552.101 of the Government Code.

In summary, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 21.207 of the Labor Code. The rest of the submitted information must be released pursuant to section 21.305 of the Labor Code and section 819.92 of title 40 of the Texas Administrative Code.<sup>3</sup>

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

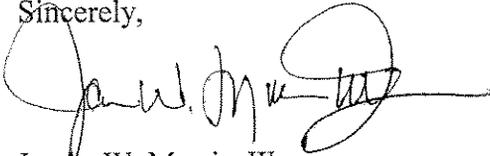
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<sup>3</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to his own social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

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

JWM/ma

Ref: ID# 289207

Enc: Submitted documents

c: Mr. Danny Oxford  
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(w/o enclosures)

Ms. Kathryn Garcia  
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