



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 28, 2008

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2008-04068

Dear Mr. Phillips:

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# 305680.

The City of Fort Worth (the "city") received a request for information relating to a claim of employment discrimination. You claim that portions of the requested information are excepted from disclosure under sections 552.1175, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge that the city failed to meet the deadline prescribed by section 552.301(b) of the Government Code in requesting an open records decision from this office. *See Gov't Code § 552.301(b)*. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because sections 552.1175, 552.136, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider your arguments.

Next, you indicate that the submitted information was compiled by the Fort Worth Community Relations Department (the "department") in the course of its investigation of an employment discrimination claim filed under section 21.201 of the Labor Code. *See* Labor Code § 21.201 (person claiming to be aggrieved by unlawful employment practice or person's agent may file complaint with Texas Workforce Commission ("TWC")). We understand that the department was created under chapter 21 of the Labor Code. *See id.* § 21.152 (providing for creation of local commissions). We also understand that pursuant to chapter 21, both the federal Equal Employment Opportunity Commission (the "EEOC") and the TWC have deferred jurisdiction to hear complaints to the department. *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 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> 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, we note that the requestor's law firm 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 records to a party to a complaint filed under section 21.201 of the Labor Code and provides as follows:

(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.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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:

(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). In this instance, the submitted documents reflect that the department has taken final action and completed its investigation of the complaint to which the submitted information pertains. We therefore conclude that, because the requestor represents a party to the complaint, the requestor 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. We note that exceptions to disclosure under the Act are generally not applicable to information that other statutes make public. *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). Thus, we do not address the city's arguments against disclosure.

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 to this requestor pursuant to section 21.305 of the Labor Code and section 819.92 of title 40 of the Texas Administrative 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

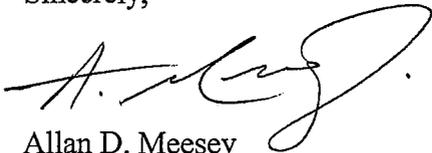
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 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,



Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/eeg

Ref: ID# 305680

Enc. Submitted documents

c: Ms. Natalie C. Rougeux  
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