



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2008

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2008-09494

Dear Ms. Byles:

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# 315479.

The City of Fort Worth (the "city") received a request for all Equal Employment Opportunity Commission ("EEOC") documents compiled during its investigation of a specified claim of employment discrimination. You state that some of the requested information has been released to the requestor pursuant to section 21.305 of the Labor Code.¹ You claim that the submitted 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.

¹Section 21.305 provides the following:

(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.

Initially, you inform us 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 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), 21.204 (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." This exception encompasses information protected by statutes. Section 21.207(b) of the Labor Code provides as follows:

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). You assert that the submitted information relates to efforts at mediation or conciliation between the parties to the dispute, and you inform us that the department has not received the written consent of both parties to release this information. Based on your representations and our review, we agree that some of the submitted information concerns efforts at mediation or conciliation; therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with section 21.207(b) of the Labor Code. You have not explained how the remaining information, which generally consists of the employer's response to the discrimination complaint and an investigator's handwritten notes, concerns efforts at mediation or conciliation; therefore, we find you have not established that the remaining information is confidential under section 21.207(b), and the city may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses federal law. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, we agree that the submitted W-4 tax forms are confidential

under section 6103(a), and the city must withhold them under section 552.101 of the Government Code.²

Finally, you assert that a portion of the submitted information is protected by common-law privacy. You also state that the city has redacted Texas motor vehicle record information pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007) and social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code §§ 552.147 (b), 552.301(a); Open Records Decision No. 673 at 7-8 (2001). However, the remaining information pertains to the specified claim of employment discrimination, and you inform us that the requestor has a right of access to information relating to this claim pursuant to section 21.305 of the Labor Code. Therefore, based on your representation that the requestor has a statutory right of access to the information pertaining to the complaint at issue, the city may not withhold any of the requested information pursuant to common-law privacy, section 552.130, or section 552.147. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in the Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act.).

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.207 of the Labor Code and the W-4 tax forms you have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The city must release the remaining information pursuant to 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 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). If the governmental body does not file suit over 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

²We note that you have marked these documents to be withheld under "26 USC § 1603."

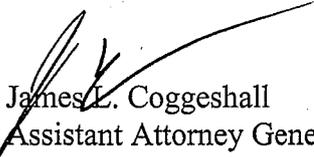
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 315479

Enc. Submitted documents

c: Ms. Nancy L. Waters
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(w/o enclosures)