



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 14, 2008

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street 3rd Floor
Fort Worth, Texas 76102

OR2008-14068

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# 324542.

The Fort Worth Community Relations Department (the "department") received a request for information relating to the requestor's charge of employment discrimination. You claim that some of 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.

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. You raise section 552.101 in conjunction with section 21.207(b) of the Labor Code, which provides as follows:

(b) Without the written consent of the complainant and respondent, the [Texas Workforce Commission ("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.

Labor Code § 21.207(b). You explain that the department is a local agency authorized to investigate and resolve complaints of employment discrimination under chapter 21 of the Labor Code. *See id.* §§ 21.152 (providing for creation of local commissions), 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 TWC). We understand that TWC has deferred jurisdiction to the department to hear employment discrimination complaints.

You indicate that the submitted information is related to the department's investigation of a charge of employment discrimination. You state that the department has released the majority of its file to the requestor, pursuant to her statutory right of access under section 21.305 of the Labor Code. *See id.* § 21.305(a)-(b); 40 T.A.C. § 819.92. You explain that the submitted information is related to the department's efforts to mediate the dispute. You state that the department has not received the required written consent of both parties to the charge to release the submitted information. Based on your representations and our review of the information at issue, we agree that some of the submitted information, which we have marked, is confidential under section 21.207(b) of the Labor Code and must be withheld from disclosure on that basis under section 552.101 of the Government Code. You have not explained how the remaining information, which generally consists of the employer's response to the discrimination complaint, personnel information, 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 department may not withhold it under section 552.101 on that ground. As you raise no further exceptions to disclosure, the remaining submitted information must be released.¹

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).

¹We note that the submitted information contains private information pertaining to the requestor and the requestor's social security number to which she has a right of access. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). If the department receives another request for this information from a different requestor without such a right of access, it should again seek our decision.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 324542

Enc. Submitted documents

c: Ms. Pearlean Sims
3924 Wendover Drive
Fort Worth, Texas 76133
(w/o enclosures)