



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 16, 2010

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2010-14127

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# 396241 (PIR No. W002494).

The City of Fort Worth (the "city") received a request for the requestor's Community Relations Department (the "department") investigation file pertaining to The Dannon Company, Inc. ("Dannon"). Although you take no position on the availability of the information, you state you have notified Dannon of the request and of its right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding release of requested information). We have received comments from Dannon and the requestor. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the department compiled the submitted information 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 (the "TWC")). We understand 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 Equal Employment Opportunity Commission 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 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information 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. We note, however, the requestor is a party to the 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.

(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. The city does not indicate the complaint was resolved through a voluntary settlement or conciliation agreement, and the department indicates it has taken final action by issuance of the requestor's notice of right to sue. Thus, we find the requestor has a right of access to the submitted information under section 21.305.

Dannon asserts portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, a specific statutory right of access prevails over the common law. *See Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Forth Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle). Because the requestor, in this instance, has a statutory right of access to the requested information, no portion of it may be withheld under section 552.101

in conjunction with common-law privacy.<sup>1</sup> Accordingly, the city must release the submitted information to this requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/eeg

Ref: ID# 396241

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Danielle M. White  
Corporate Counsel  
The Dannon Company Inc.  
100 Hillside Avenue  
White Plains, New York 10603  
(w/o enclosures)

---

<sup>1</sup>The requestor has a special right of access to the submitted information. If the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.