



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2011

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

OR2011-07864

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# 419578.

The City of Fort Worth (the "city") received a request for information related to an investigation of the requestor's client conducted by the city's Human Relations Unit (the "unit").¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

You state, and we agree, the submitted information reflects it was compiled by the unit 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 may file complaint with Texas Workforce Commission (the "TWC")). You state the unit was created under chapter 21 of the Labor Code. *See id.* § 21.152 (providing for creation of local commissions). We also understand, pursuant to chapter 21, both the Equal Employment Opportunity Commission and the TWC have deferred jurisdiction to hear complaints to the unit. *See id.* § 21.154(a) (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 21.154 of the Labor Code, the unit is a local agency authorized to investigate and resolve complaints of

¹ You inform us the unit was formerly named the Community Relations Department.

employment discrimination. *See* Labor Code §§ 21.154(a) (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. Section 552.101 encompasses section 21.304 of the Labor Code, which relates to public release of information obtained by the TWC. Section 21.304 provides:

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, and you acknowledge, the requestor’s client 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:

(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. You do not indicate the complaint was resolved through a voluntary settlement or conciliation agreement. You state, and provide documentation showing, the unit has issued its final determination regarding the investigation. Therefore, we agree with the city’s belief that the requestor has a right of access to the submitted information under section 21.305 of the Labor Code.

You also raise section 552.101 of the Government Code in conjunction with common-law privacy,² and you seek to withhold e-mail addresses of members of the public under section 552.137 and social security numbers under section 552.147 of the Government Code. However, these sections are general exceptions to disclosure under the Act and do not have

² Section 552.101 also encompasses the common-law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

their own release provisions. A specific statutory right of access prevails over common law or a general exception to disclosure under the Act. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Because the requestor in this instance has a statutory right of access to the requested information, the city may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy or sections 552.137 and 552.147.

You also seek to withhold a Texas license plate number under section 552.130. This section excepts from disclosure “information [that] relates to ... a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130(a)(1)-(2). Therefore, the information you have marked is generally excepted under section 552.130 of the Government Code. We find there is a conflict between the confidentiality granted by 552.130 of the Government Code and the right of access granted under section 21.305 of the Labor Code. Where information falls within both a general and a specific provision of law, the specific provision typically prevails over the general, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See id.* § 311.026(b); *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.) (clear legislative intent required for general statute to prevail over earlier specific statute). In this instance, section 21.305 generally applies to any type of record contained in the unit’s complaint records, while section 552.130 specifically protects Texas motor vehicle record information and contains its own release provisions. Gov’t Code § 552.130. Furthermore, section 552.130 was passed in a later legislative session than section 21.305.³ Therefore, we find the confidentiality provision of section 552.130 is more specific than the access provision of section 21.305. Accordingly, the city must withhold the information you have marked under section 552.130 of the Government Code. As you raise no additional exceptions to disclosure, the remaining submitted information must be released to this requestor.⁴

³ Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 (Vernon) (codified as section 552.130 of the Government Code).

⁴ As noted, the requestor in this instance has a special right of access under section 21.305 of the Labor Code to the information being released. Therefore, should the city receive another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.

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, 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/bs

Ref: ID # 419578

Enc. Submitted documents

c: Requestor
(w/o enclosures)