



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 1, 2011

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

OR2011-09380

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# 422531 (PIR No. W008163).

The Fort Worth Human Relations Unit (the "unit") received a request for the complaint and file materials pertaining to a specified Equal Employment Opportunity Commission (the "EEOC") charge number.¹ You ask whether 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.

You state, and we agree, the submitted information reflects that 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 or person's agent may file complaint with Texas Workforce Commission ("TWC")). You state that the unit 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 unit. *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 unit is a local agency authorized to investigate and resolve complaints of

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

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 excepts “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. 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, and you acknowledge, that the requestor is an attorney representing 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.

Labor Code § 21.305. The requestor provides documentation showing final agency action has been taken in this case. You do not indicate the complaint was resolved through a voluntary settlement or conciliation agreement. Thus, we find the requestor has a right of access to the submitted information under section 21.305.

You also assert the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.² 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

²Section 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).

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.³ Accordingly, the unit 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, 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/bs

Ref: ID# 422531

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³The requestor has a special right of access to the submitted information. If the unit receives another request for this particular information from a different requestor, then the unit should again seek a decision from this office.