



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2012

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

OR2012-05914

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# 451648 (PIR No. W014554).

The Fort Worth Human Relations Unit (the "unit") received a request for any and all documents contained in a specified investigation file. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

You state the submitted information was compiled by the unit of the City of Fort Worth (the "city") in the course of the unit's 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 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 (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 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 of the Government Code 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 in compliance with section 21.305 and as necessary to the conduct of a proceeding under this chapter.

Labor Code § 21.304. We note the submitted information pertains to a complaint of unlawful employment discrimination that was filed with the unit. Thus, the submitted information is generally confidential under section 21.304 of the Labor Code. However, 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) Except as provided by Subsection (c), 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) Except as provided by Subsection (c), 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] 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.

(c) Notwithstanding Section 552.023, Government Code, the following information is not considered public information for the purposes of Chapter 552, Government Code, and may not be disclosed to a party to a complaint filed under Section 21.201:

- (1) identifying information of persons other than the parties and witnesses to the complaint;
- (2) identifying information about confidential witnesses, including any confidential statement given by the witness;
- (3) sensitive medical information about the charging party or a witness to the complaint that is:
 - (A) provided by a person other than the person requesting the information; and
 - (B) not relevant to issues raised in the complaint, including information that identifies injuries, impairments, pregnancies, disabilities, or other medical conditions that are not obviously apparent or visible;
- (4) identifying information about a person other than the charging party that is found in sensitive medical information regardless of whether the information is relevant to the complaint;
- (5) nonsensitive medical information that is relevant to the complaint if the disclosure would result in an invasion of personal privacy, unless the information is generally known or has been previously reported to the public;
- (6) identifying information about other respondents or employers not a party to the complaint;
- (7) information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes; and
- (8) identifying information about a person on whose behalf a complaint was filed if the person has requested that the person's identity as a complaining party remain confidential.

(d) In this section, "identifying information" has the meaning assigned by Section 32.51, Penal Code.

Id. § 21.305. You do not indicate the complaint was resolved through a voluntary settlement or conciliation agreement. Further, you state, and provide documentation demonstrating, that

the complaining party has filed a civil complaint in federal district court against the requestor's client alleging a violation of federal law. We note subsection 21.305(c) identifies eight categories of information not considered public information for the purposes of chapter 552 and which may not be disclosed to a party to a complaint filed under section 21.201. Pursuant to section 21.305, the requestor, as a party to the complaint, generally has a right of access to the unit's records relating to the complaint. However, the unit must withhold the information subject to subsection (c) under section 552.101 of the Government Code in conjunction with section 21.305(a).

Section 552.101 of the Government Code also encompasses section 21.207(b) of the Labor Code, which provides as follows:

(b) Without the written consent of the complainant and respondent, the [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.

Id. § 21.207(b). As previously noted, the unit is a local agency authorized to investigate and resolve complaints of employment discrimination under chapter 21 of the Labor Code. We note a portion of the submitted information is related to the unit's efforts to mediate the dispute. You do not indicate the unit has received the required written consent of both parties to the charge to release the information at issue. Therefore, we find the information 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.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted W-4 form constitutes tax return information that is confidential under section 552.101 of the Government Code in conjunction with

federal law. Section 6103(a), as a federal law, preempts any conflicting state provisions, including section 21.305 of the Labor Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Accordingly we find, notwithstanding section 21.305, the unit must withhold the submitted W-4 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted I-9 form and its attachment in response to this request for information would be “for purposes other than for enforcement” of the referenced federal statutes. As previously noted, as a federal law, section 1324a preempts any conflicting state provisions, including section 21.305 of the Labor Code. *See Equal Employment Opportunity Comm'n*, 905 F. Supp. at 382. Accordingly, the submitted I-9 form and attachment we have marked are excepted from disclosure under section 552.101 of the Government Code in conjunction with federal law and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.¹

The unit asserts portions of the remaining information are excepted from disclosure under sections 552.136, 552.137, and 552.147 of the Government Code. However, these sections are general exceptions to disclosure under the Act. A specific statutory right of access prevails over the general exceptions to disclosure under the Act. *See* 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 unit may not withhold the information you have marked under sections 552.136, 552.137, and 552.147 of the Government Code.

You also assert a portion of the remaining information contains motor vehicle record information subject to section 552.130 of the Government Code. As previously noted, a specific statutory right of access prevails over general exceptions to disclosure under the Act. ORD 451 at 4. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 21.305 of the Labor Code and the confidentiality provided under section 552.130. As stated above, where information falls

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

within both a general and a specific provision, the specific provision typically prevails as an exception to the general provision. *See* Gov't Code § 311.026(b); *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.). In this instance, section 21.305 generally applies to any type of record contained in unit complaint records. Section 552.130 specifically protects motor vehicle record information. Thus, we conclude section 552.130 is more specific than the general right of access provided under section 21.305 of the Labor Code. We therefore conclude, notwithstanding section 21.305, the unit must withhold the driver's license number you have marked under section 552.130 of the Government Code.

You state some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the unit must withhold the information we have marked under section 21.207(b) of the Labor Code in conjunction with section 552.101 of the Government Code. The unit must withhold the marked W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The submitted I-9 form and attachment we have marked are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.² The unit must withhold the driver's license number you have marked under section 552.130 of the Government Code. Except as provided by subsection 21.305(c) of the Labor Code, the remaining information must be released, but any information subject to copyright may only be released in accordance with copyright law.³

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a W-4 form under section 552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a) and a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, without the necessity of requesting an attorney general decision.

³Because the requestor has a special right of access to the information being released, if the unit receives another request for this information from an individual other than this requestor, the unit must again seek a decision 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 451648

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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