



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 24, 2012

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

OR2012-11463

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# 459932 (PIR No. W016808).

The City of Fort Worth (the "city") received a request for the file pertaining to a specified employment discrimination claim. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We first note the submitted information contains the requestor's client's W-4 form. 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, such as section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 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 (the “IRS”) regarding a taxpayer’s liability under title 26 of the United States Code. *See Chamberlain v. Kurtz*, 589 F.2d 827, 840-41 (5th Cir. 1979); *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). As a federal law, section 6103(a) preempts any conflicting state provisions. *See Equal Employment Opportunity Comm’n*, 905 F. Supp. at 382. Thus, the submitted W-4 form is generally confidential under section 552.101 of the Government Code in conjunction with federal law.

However, subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer’s designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(i) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (section 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual’s right of access under the federal Freedom of Information Act). As noted, the W-4 form belongs to requestor’s client. Therefore, pursuant to section 6103(c) of title 26 of the United States Code, the city must release the submitted W-4 to this requestor pursuant to section 6103 of title 26 of the United States Code.

We next turn to your arguments against disclosure of the remaining information. You state the information at issue was compiled by the city’s Human Relations Division (the “division”) in the course of the division’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 the Texas Workforce Commission (the “TWC”)). You state the division 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 division. *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 division 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 also encompasses section 21.304 of the Labor Code, which relates to public release of information obtained by the TWC. Section 21.304 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 division. Thus, the submitted information is generally confidential under section 21.304 of the Labor Code. However, as you acknowledge, 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 state the complaint was not resolved through a voluntary settlement or conciliation agreement. Further, you state the division has taken final action. We note subsection 21.305(c) identifies eight categories of information not considered public information for the purposes of the Act 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 representative of a party to the complaint, generally has a right of access to the division's records relating to the complaint. However, the city 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 division is a local agency authorized to investigate and resolve complaints of employment discrimination under chapter 21 of the Labor Code. We note some of the submitted information is related to the division's efforts to mediate the dispute. You do not indicate the division 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 indicated is subject to section 21.207(b) of the Labor Code and must be withheld from disclosure under section 552.101 of the Government Code on that basis.

You assert a portion of the remaining information is excepted by section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). However, we note section 552.130 protects personal privacy. As noted, the requestor is an attorney representing the individual whose information is at issue. Thus, as the individual's authorized representative, the requestor has a special right of access to her client's personal information. *See id.* § 552.023(a) (person or a person's authorized representative has special right of access, beyond the right of general public, to information held by a governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city may not withhold the information you have marked under section 552.130.

In summary, the city must withhold the information we have indicated under section 21.207(b) of the Labor Code in conjunction with section 552.101 of the Government Code. Except as provided by subsection 21.305(c) of the Labor Code, the city must release the remaining information.<sup>1</sup>

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<sup>1</sup>We note the requestor in this instance has a special right of access to the information being released. Accordingly, if the city should receive another request for this information from a different requestor, the city must again request an opinion 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](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/som

Ref: ID# 459932

Enc. Submitted documents

c: Requestor  
(w/o enclosures)