ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2012

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

OR2012-20370

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# 474022 (City PIR No. W020445).

The Fort Worth Human Relations Unit (the "unit") received a request for information related to a specified charge.[1] You state you will release most of the requested information. You claim some of 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.

We note 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 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 ("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

[1]We note the unit was formerly named the Fort Worth Community Relations Department.

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 as necessary to the conduct of a proceeding under this chapter.

Labor Code § 21.304. The submitted information pertains to a complaint of unlawful employment discrimination. We note 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.

Labor Code § 21.305. You state final agency action has been taken in this case. Further, you do not state the complaint was resolved through a voluntary settlement or conciliation agreement. 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 generally has a right of access to the unit's records relating to the complaint. However, the unit must withhold any information subject to subsection (c) under section 552.101 of the Government Code in conjunction with section 21.305(a) of the Labor Code.

You 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 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 submitted information, no portion of it may be withheld under section 552.101 in conjunction with common-law privacy.[3]

You have noted some of the materials at issue 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). 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. We note blank forms may not be copyrighted. 37 C.F.R. § 202.1(c). Except as provided by subsection 21.305(c) of the Labor Code, the city must release the submitted information in accordance with copyright law.

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

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[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).

[3]The 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.

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,

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 474022

Enc. Submitted documents

c: Requestor
(w/o enclosures)