



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2014

Mr. Guillermo Trevino  
Assistant City Attorney  
Office of the City Attorney  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2014-13271

Dear Mr. Trevino:

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# 531118 (Fort Worth PIR No. W033870).

The City of Fort Worth (the "city") received a request for a copy of the Human Relations Commission file 31A-2013-030. You state the city has released the majority of the responsive records to the requestor. You claim the remaining requested 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 the submitted information was compiled by the city's Human Relations Unit (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 the 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 (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 from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code 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. The submitted information pertains to a complaint of unlawful employment discrimination. We note the requestor represents 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 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 the Act and which may not be disclosed to a party to a complaint filed under section 21.201. Pursuant to section 21.305(b), the requestor generally

has a right of access to the unit's records relating to the complaint; however, the city must withhold any information subject to subsection (c) under section 552.101 of the Government Code.

You also raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information.<sup>1</sup> Further, you indicate you will redact information under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers under section 552.147(b) of the Government Code.<sup>2</sup> We note, however, sections 552.137 and 552.147 are general exceptions to disclosure under the Act. A specific statutory right of access prevails over the common law and general exceptions to disclosure under the Act. *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 No. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). Because the requestor, in this instance, has a statutory right of access to the information at issue, the city may not withhold the submitted information under section 552.101 in conjunction with common-law privacy. Further, the city may not redact any information under sections 552.137 and 552.147 of the Government Code. Accordingly, except as provided by subsection 21.305(c) of the Labor Code, the city must release the submitted information.<sup>3</sup>

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.

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<sup>1</sup>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).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

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

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 531118

Enc. Submitted documents

c: Requestor  
(w/o enclosures)