



March 24, 1999

Mr. Hugh Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-7600

OR99-0824

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Open Records Act. Your request was assigned ID# 122895.

The City of Fort Worth received a request for access to information relating to the Fort Worth Human Relations Committee (the "FWHRC"), specifically "all communications taking place with members and employees of the FWHRC between 23 June 1998 and 10 December 1998" and "all communications between members and employees of the FWHRC and the mayor and/or city council members for the same period." You submit representative samples of the requested information.¹

You seek to withhold the information, in whole or in part, under sections 552.101 and 552.108 of the Government Code.

Section 552.108 excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

¹In reaching our conclusion, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You advise that the FWHRC “is the investigative agency for determining whether cause exists to proceed with prosecution. As a result, the information . . . falls within the ambit of the exception at § 552.108.” In our opinion, you have not demonstrated that release of the information would interfere with the detection, investigation, or prosecution of crime, or how the information otherwise falls within the protection of section 552.108. Therefore, you may not withhold any of the requested information under section 552.108.

Section 552.101 requires withholding, *inter alia*, information made confidential by statute.² You advise that the FWHRC “is a recognized deferral agency under both the federal and state anti-discrimination statutes for the investigation of charges of discrimination in housing, employment and public accommodation. As such, it is subject to federal and state legal standards for confidentiality. See, e.g., Texas Labor Code §§ 21.207 and 21.304, and 29 CFR §§ 1601.22 and 1601.26. See also Texas Property Code § 301.085 and 42 USC § 3610(b) and (d).” You state that much of the requested material “contains information concerning the identities of parties to charges of discrimination and allegations concerning the parties” and state that “[i]t is the city’s position that that information is confidential by law.”

With regard to employment discrimination, section 1601.22 of the federal regulations you cite provides in part:

Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under the ADA or title VII, nor information obtained from records required to be kept or reports *required to be filed pursuant to the ADA or Title VII*, shall be made matters of public information . . . *prior to the institution of any proceeding under the ADA or title VII involving such charge or information.*

(Emphases added)

The above-quoted restriction, however, does not apply to earlier disclosure to parties, attorneys or authorities necessary to securing relief or to carrying out functions under Title VII or the American with Disabilities Act, nor to “*publication of data derived from such information in a form which does not reveal the identities of charging parties, respondents, or persons supplying the information.*” *Id.* (emphasis added).

Section 1601.26(a) of the regulations provides in pertinent part:

²This section applies to information made confidential by federal law as well as state law. See Open Records Decision No. 476 at 5 (1987). Information made confidential by federal law includes information made confidential by a federal statute or a federal regulation. *Id.*; cf. Open Records Decision No. 294 at 2 (1981). Furthermore, when information in the possession of a federal agency is considered confidential under federal law, the information remains confidential when it is shared with a governmental body in Texas. Open Records Decision No. 561 at 7 (1990).

Nothing that is said or done during and as part of the informal endeavor of the Commission to eliminate unlawful employment practices by informal methods or conference, conciliation, and persuasion may be made a matter of public information . . . without the written consent of the persons concerned.³

Section 21.304 of the Texas Labor Code provides that an officer or employee of the state Commission on Human Rights “may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter.” Section 21.204 provides for the state commission’s investigation of complaints including those referred by the federal government or for which subject matter jurisdiction is deferred by the latter.

The other Labor Code provision you cite, section 21.207, provides that where a determination of reasonable cause is made, after an investigation by the executive director of the state Commission on Human Rights or his designee under section 21.206, the commission shall “endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.” *Id.* §21.206(a). The commission may not disclose 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 probable cause” without the written consent of the complainant and respondent.” *Id.* §21.206(b).

With regard to information related to housing discrimination, you cite to the confidentiality provisions in section 301.085 of the Texas Property Code and provisions of the federal Fair Housing Act, title 42 U.S.C. section 3610(b) and (d). Subsection (a)(1)(B)(iv) of title 42 U.S.C. section 3610 provides that the Secretary of Housing and Urban Development⁴ shall investigate complaints of discriminatory housing practices. Subsection (b)(5)(A) provides that the secretary is to make a final investigative report of the investigation. Subsection (b)(1) provides for the Secretary, “[d]uring the period beginning with the filing of the complaint and ending with the filing of a charge or dismissal . . . engage in conciliation with respect to such complaint.” A conciliation agreement is public unless the complainant and respondent agree otherwise and the Secretary determines that disclosure is not required to further the purposes of the provisions. *Id.* § 3610(a)(4). Subsection (d) provides that without

³It appears that FWHRC is a designated local FEP agency under Title 29, Code of Federal Regulations, Part 1600. *See id.* Subpart G. As such, we understand it to be subject to the confidentiality provisions set out in the Code of Regulations applicable to the Federal Equal Employment Opportunity Commission regarding the investigation of employment discrimination. *See id.* § 1601.3 (definitions).

⁴Based on your representations, we will assume for purposes of this decision that FWHRC, as a “deferral” agency for HUD housing discrimination cases, is subject to the regulations governing HUD’s release of information.

the consent of the persons concerned, “[n]othing said or done in the course of conciliation” may be made public or used in evidence in a subsequent proceeding except that the Secretary must make available to the parties information derived from the Secretary’s investigation of the complaint and the report relating to the investigation.

The Property Code provision you cite, section 301.085, directs the state Commission on Human Rights, “during the period beginning with the filing of a complaint [of housing discrimination] and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, [to] engage in conciliation.” *Id.* §301.085(a). Conciliation agreements are subject to commission approval and may provide for arbitration or other means of dispute resolution. *Id.* §301.085(b) and (c). The conciliation agreement is public unless the parties agree that it is not and the commissioner determines that disclosure is not necessary. *Id.* §301.085(d). “Statements made and actions taken in the conciliation may not be made public or used as evidence in a proceeding” under chapter 301 “without the written consent of the persons involved.” *Id.* subsection (e). Information derived from the investigation and the final investigative report are, however, available to the parties. *Id.* subsection (f).

We have reviewed your arguments, the authorities you cited, and the information at issue. In our opinion, you have not clearly established to what extent the submitted information is protected by the cited statutes and regulations. Except for the provision of title 42 C.F.R. section 1601.22 regarding “publication” of employment discrimination data, the statutes and regulations do not appear to protect *per se* the *identities* as you suggest; the latter restriction appears to apply only to charges, information, and “records required to be kept or reports required to be filed” in employment discrimination cases “prior to the institution of any proceeding under the ADA or Title VII involving such charge or information.” We note too that you have in many cases not indicated, with respect to your claim under section 1601.22, which portions of the submitted information constitute “records required to be kept or reports required to be filed,” whether “proceedings” have been instituted to which particular information relates, etc.

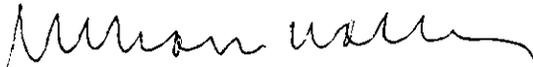
Your Exhibit B-12 appears to relate to an employment discrimination investigation made by FWHCR on referral from the state Commission on Human Rights and thus is made confidential by section 21.304 of the Labor Code.⁵ Your Exhibits B-17, B-18, and B-20 -- respectively, a “Pending EEOC File,” “Closed EEOC File (Settlement),” and “Closed EEOC (No Cause)” -- appear to be protected under sections 1601.22 and 1601.26 of title 29 of the Code of Federal Regulations.

⁵Attorney General Opinion JM-275 (1984) ruled that where a case was *referred* by the Human Rights Commission to a local human rights commission under the predecessor provisions of chapter 21 of the Property Code, information transferred from the state commission the local commission was subject to the confidentiality provision now in section 21.304.

Most of the information in Exhibit B-19, "Closed HUD (Conciliation)" appears to be protected by section 3610(d) of title 42, U.S.C. However, the conciliation agreement therein appears to be specifically made public under section 3610(b)(4), absent agreement by the parties and the "Secretary's determination," as therein provided. With regard to the information in the remaining exhibits, however, we do not believe that you have demonstrated that it is protected under the provisions you cite. Also, please note that we do not address whether the information at issue is protected under any provisions you have not raised. *See* Gov't Code § 552.301 (governmental body in seeking attorney general decision as to withholding requested information must, *inter alia*, state the exceptions that apply, explain why they apply, and label the submitted information to indicate which exceptions apply to which parts of the information). Thus except as noted above, you must release the requested information unless you can demonstrate to this office that it is confidential by law. *See* Gov't Code § 552.352 (criminal penalties for distribution of confidential information).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW\ch

Ref: ID# 122895

Enclosures: Submitted documents

cc: Mr. William Ford
1440 W. Gambrell
Fort Worth, Texas 76115
(w/o enclosures)