



April 16, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-1922

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161346.

The City of Fort Worth (the "city") received a request for the complete file of the Fort Worth Human Relations Commission (the "FWHRC") concerning FWHRC charge number 31A99362 alleging employment discrimination. The requestor states that he is an attorney representing a party in a pending lawsuit concerning the specified charge. You indicate that the city has released some responsive information to the requestor. You claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 21.303, 21.304, and 21.305 of the Texas Labor Code and sections 327.9 and 327.10 of title 40 of the Texas Administrative Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You inform us that the FWHRC was created pursuant to title 21 of the Labor Code. *See* Labor Code § 21.152 (providing for the creation of local commissions). You explain that the Equal Employment and Opportunity Commission (the "EEOC") and the Texas Commission on Human Rights (the "Commission") have deferred jurisdiction to hear complaints to the FWHRC. *See* Labor Code §21.154; *see also* 40 T.A.C. §325.4 (authorizing cooperative agreements between Commission and local commissions). The FWHRC is a local agency authorized by sections 21.152 of the Labor Code to investigate complaints, as provided by section 21.204 of the Labor Code. Section 21.204 relates to investigations by the Commission. You claim that sections 21.303, 21.304, and 21.305 of the Labor Code except the requested information from disclosure.

Section 21.304 of the Labor Code concerns the release of Commission information to the public and provides as follows:

An officer or employee of the commission 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 327.10 of title 40 also governs the public's access to Commission records.¹

However, in this case, we understand that the requestor represents a party to a complaint filed under section 21.201 of the Labor Code. Section 21.305 of the Labor Code concerns the release of Commission records to a party to a complaint filed under section 21.201 and provides:

(a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) 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 commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

¹Section 327.10 provides as follows:

(a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the §§Texas Labor Code, 21.201-21.207 (formerly §Texas Revised Civil Statutes Annotated Article 5221k, 6.01), except as necessary to the conduct of a proceeding under this Act.

(b) No commissioner or employee of the commission may make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, alternative dispute resolution, conciliation, or persuasion, whether or not there is a determination of reasonable cause.

Although you did not raise section 21.201(b) of the Labor Code, this provision is similar to the rule you raise regarding the public's access to commission records. Section 21.207(b) reads as follows:

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

The Commission has adopted rules governing access to Commission records by a party to a complaint at Title 40 of the Texas Administrative Code section 327.9. This provision provides:

Pursuant to the limitations established by the §§Texas Labor Code, 21.304-21.305 (formerly §Texas Revised Civil Statutes Annotated Article 5221k, 8.02(a)), the executive director shall, on written request of a party to a complaint filed under the §Texas Labor Code, 21.201 (formerly §Texas Revised Civil Statutes Annotated Article 5221k, 6.01(a)), allow the party access to the commission's records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:

(1) following the final action of the commission, a party to the complaint or the party's attorney certifies in writing that a civil action is to be filed under the Act within 60 days from the date of receipt of the commission's notice of right to file a civil action or a civil action under the Act is pending in state court; or

(2) a party to the complaint or the party's attorney certifies in writing that a civil action relating to the complaint is pending in federal court alleging a violation of federal law.

You inform us that the information at issue is compiled and maintained by FWHRC pursuant to subchapter D of Title 21 of the Labor Code. You further inform us that the city has received no written consent from the complainant or respondent authorizing the release of the information you have submitted for our review. Accordingly, section 327.10 does not provide the requestor with a right of access to the information at issue. We note that the requestor is an attorney representing a party to this complaint in a pending civil action. From the information you have submitted, however, we are unable to determine whether the requestor has certified in writing that a civil action relating to a complaint under section 21.201 of the Labor Code is pending in state court or is pending in federal court alleging a violation of federal law. Therefore, if the city determines that the requestor has provided the proper certification to the city, then the city must release the information to the requestor pursuant to section 327.9. If the proper certification is not provided to the city, we conclude that the submitted information is confidential under section 21.304 of the Labor Code, and must therefore be withheld under section 552.101.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 161346

Enc: Submitted documents

c: Mr. Rory Divin
McDonald Sanders
777 Main Street, Suite 1300
Fort Worth, Texas 76102
(w/o enclosures)