



May 13, 2002

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

OR2002-2504

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# 162776.

The City of Forth Worth (the "city") received a request for a certified copy of a file regarding a filed discrimination charge. You state that you have released a portion of the requested information. You claim, however, that the portion of requested information concerning efforts of conciliation is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the city received the request on February 20, 2002. However, the city did not submit this request until after the ten business-days after the city's receipt of the request had expired. Therefore, the city failed to submit the request within the ten-business-day deadline as required by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, *no writ*) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). *See also* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests). As section 552.101 provides a compelling reason to overcome the presumption of openness, we will address the city's arguments under that exception.

You assert that the requested information is excepted from disclosure based on section 552.101 of the Government Code in conjunction with chapter 21 of the Labor Code and title 40 of the Administrative Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as section 327.10 of the Administrative Code. Chapter 327 of the Administrative Code concerns administrative review of the Texas Commission on Human Rights. Section 327.10 reads as follows:

(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.

You state that "the city has not received written consent to release information regarding the efforts of conciliation from the complainant and respondent." Accordingly, we agree that the highlighted information is excepted pursuant to section 552.101 in conjunction with section 327.10 of the Administrative Code. Therefore, you must not release the highlighted information.

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,


V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 162776

Enc: Submitted documents

c: Ms. Zoe Courtney
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(w/o enclosures)