



August 1, 2002

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

OR2002-4208

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# 166554.

The City of Fort Worth (the “city”) received a request for “all documents maintained by the [Human Rights Commission (the “HRC”)] in connection with the complaint brought by Ms. McKee.” The requestor states that she represents a party in a lawsuit related to the referenced complaint, filed in the State of Texas District Court, Tarrant County, Cause No. 153-190830-01. You state that the city has released most of the requested information to the requestor. However, you claim that a portion 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, as well as under 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.

You inform us that the city’s HRC was created pursuant to title 21 of the Labor Code. *See* Labor Code § 21.152 (providing for creation of local commissions). You explain that the Texas Commission on Human Rights (the “TCHR”) has deferred jurisdiction to hear complaints to the HRC. *See* Labor Code §21.154; *see also* 40 T.A.C. §325.4 (authorizing cooperative agreements between TCHR and local commissions). The city has a “Worksharing Agreement” between the HRC and the Equal Employment Opportunity Commission. The city also has a “Cooperative Agreement” between the TCHR and the HRC. The HRC 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 TCHR. 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 TCHR 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.<sup>1</sup>

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 TCHR 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.

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<sup>1</sup>Section 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 TCHR has adopted rules governing access to TCHR records by a party to a complaint at section 327.9 of Title 40 of the Texas Administrative Code. 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.

In this case, you state that the requested investigative file has been released to the requestor, with certain mediation or conciliation information, which you have highlighted and attached as Exhibit C, withheld. Consequently, we find you have determined that the requestor is an attorney who has certified in writing that she represents a party in a civil action which is pending in state court, and that the complaint was not resolved through a voluntary settlement or conciliation agreement. Accordingly, section 21.305 of the Labor Code and section 327.9 of title 40 of the Texas Administrative Code require the HRC to grant the requestor access to the highlighted information. A release to a party under these provisions is not inconsistent with the prohibition on release of information to the public found in section 21.207 of the Labor Code and section 327.10 of the rules. Such a release is not a release to the public under the Public Information Act. *See* Open Records Decision No. 534 at 7 (1989).

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 166554

Enc: Submitted documents

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(w/o enclosures)