



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 21, 2009

Ms. Cheryl K. Byles  
Assistant City Attorney  
The City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-05236

Dear Ms. Byles:

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# 340685 (FW ID# 1899-09).

The City of Fort Worth (the "city") received a request for the entire investigative file for the Fort Worth Community Relations Department (the "department") complaint number FW-08-171. You state you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You argue that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.207 of the Texas Labor Code. Section 21.207 makes confidential discussions related to mediation of employment discrimination claims, and provides in pertinent part as follows:

(b) Without the written consent of the complainant and respondent, the [Texas Workforce Commission ("TWC")], 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.

Labor Code § 21.207(b). You explain that the department is a local agency authorized to investigate and resolve complaints of employment discrimination under chapter 21 of the Labor Code. *See id.* §§ 21.152 (providing for creation of local commissions), 21.154 (authorizing local commission to which complaint is referred or jurisdiction is deferred to receive, investigate, conciliate, or rule on complaint), 21.204 (relating to investigation of complaints by TWC). We understand that TWC has deferred jurisdiction to the department to hear employment discrimination complaints.

You state that the submitted information relates to efforts at mediation or conciliation between the parties to an employment discrimination dispute. Upon review, however, we find that the submitted information pertains to a housing discrimination claim, and not an employment discrimination claim. The submitted information is therefore not subject to section 21.207(b) of the Labor Code and may not be withheld pursuant to section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of common-law 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage, choice of particular insurance carrier, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). The submitted documents include an attorney fee bill of a private party, which you claim constitutes personal financial information which is not of legitimate public concern. Upon review, we agree the city must withhold the submitted attorney fee bill under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked additional information that must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You assert that the remaining submitted information contains a bank account number and routing number that are subject to section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). However, the submitted account

information pertains solely to the requestor. We note that section 552.136 protects privacy interests; thus, the requestor has a right of access to this information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b). Accordingly, the city may not withhold any of the submitted information under section 552.136 of the Government Code.

You claim that the e-mail addresses you have marked in the remaining submitted information are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code* § 552.137(a)-(c). We note the requestor has a right of access to his own e-mail address. *Id.* § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interest). The e-mail addresses we have marked are not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

We note that some of the remaining information at issue appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 (1990).*

In summary, the information we have marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The e-mail addresses we have marked must be withheld pursuant to section 552.137 of the Government Code. The remaining information must be released, but any copyrighted information must be released in accordance with copyright law.

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.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/jb

Ref: ID# 340685

Enc. Submitted documents

c: Requestor  
(w/o enclosures)