



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2009

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

OR2009-06125A

Dear Ms. Byles:

This office issued Open Records Letter No. 2009-06125 (2009) on May 7, 2009. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on May 7, 2009. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 349494 (Fort Worth PIR No. 2225-09).

The Fort Worth Community Relations Department (the "department") received a request for information relating to a specified charge of employment discrimination. You state some of the requested information has been released. We note you have redacted a social security number pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim the submitted

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 21.207(b) of the Labor Code, which provides 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 indicate that the submitted information is related to the department's investigation of a charge of employment discrimination. You further indicate that the department has released the majority of its file to the requestor, pursuant to a statutory right of access under section 21.305 of the Labor Code. *See id.*: § 21.305(a)-(b); 40 T.A.C. § 819.92. You explain that the submitted information is related to the department's efforts to mediate the dispute. You state that the department has not received the required written consent of both parties to the charge to release the submitted information. Based on your representations and our review of the information at issue, we agree that the information you have marked is confidential under section 21.207(b) of the Labor Code and must be withheld from disclosure on that basis under section 552.101 of the Government Code.

We note a portion of the remaining information is subject to the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 552.101 also encompasses section 159.002 of the Occupations Code, which provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(b), (c). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The remaining information contains medical records. However, as you acknowledge, the requestor has a right of access to the department's records relating to the complaint pursuant to section 21.305 of the Labor Code in conjunction with section 819.92(a) of title 40 of the Texas Administrative Code. *See* Labor Code § 21.305; *see also* 40 T.A.C. § 819.92(b). Because these medical records fall under both the MPA and section 21.305 of the Labor Code in conjunction with section 819.92(a) of title 40 of the Texas Administrative Code, and the release provisions of these sections are in conflict, we must determine which statute governs access to the medical records. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). We note that sections 21.305 and 819.92(a) generally apply to any type of record contained in commission complaint records. However, the MPA is more specific because it is only applicable to medical records. Accordingly, we conclude that, notwithstanding the applicability of sections 21.305 and 819.92(a), the medical records we have marked may only be released in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). You assert the remaining information contains personal medical information that is excepted from disclosure under section 552.101 in conjunction with common-law privacy. However, because the requestor has a statutory right of access to the information at issue under section 21.305 of the Labor Code, the department may not withhold any of the requested information under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).

In summary, the department must withhold the information you have marked concerning efforts at mediation or conciliation under section 552.101 of the Government Code in conjunction with section 21.207(b) of the Labor Code. The department may only disclose

the marked medical records in accordance with the MPA. The remaining information must be released to the requestor.

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,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/dls

Ref: ID# 349494

Enc. Submitted documents

c: Requestor  
(w/o enclosures)