



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 2, 2020

Mr. Thomas Royce Hansen
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2020-10160

Dear Mr. Hansen:

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# 819943 (PIR No. W096057).

The City of Fort Worth (the "city") received a request for certain information pertaining to a specified investigation conducted by the Human Resources Commission (the "HRC") involving the requestor. You claim the submitted 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.

Initially, we address your argument section 17-69 of the Fort Worth City Code prohibits the release of information that is created or compiled during an investigation of an alleged violation of this statute. 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. We note a governmental body may not promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Act), 263 (1981) (city ordinance may not conflict with Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Act). Although you raise section 17-69, you have not directed our attention to any law, nor are we aware of any, that authorizes the city to make information confidential for purposes of the Act. Consequently, we conclude the city may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of section 17-69 of the Fort Worth City Code.

Section 552.101 of the Government Code encompasses information made confidential by other statutes, such as section 21.304 of the Labor Code. You state the submitted information was compiled by the HRC in connection with its investigation of a claim filed under section 21.201 of the Labor Code. *See* Labor Code § 21.201 (person claiming to be aggrieved by unlawful employment practice or person's agent may file complaint with Texas Workforce Commission ("TWC")). You also state the HRC was created under chapter 21 of the Labor Code. *See id.* § 21.152 (providing for creation of local commissions). You explain, pursuant to chapter 21, both the Equal Employment Opportunity Commission and the TWC have deferred jurisdiction to hear complaints filed with the HRC. *See id.* § 21.154 (authorizing deferral of jurisdiction to local commissions); *see also* 40 T.A.C. § 819.76 (authorizing workshare agreements between the TWC and local commissions). Thus, under section 21.152 of the Labor Code, the HRC is a local agency authorized to investigate and resolve complaints of employment discrimination. *See* Labor Code §§ 21.154 (authorizing local commission to which complaint is referred or jurisdiction is deferred to receive, investigate, conciliate, or rule on complaint), .204 (relating to investigation of complaints by the TWC). Section 21.304 of the Labor Code, which relates to public release of information obtained by the TWC, provides, "[a]n officer or employee of the [TWC] may not disclose to the public information obtained by the [TWC] under Section 21.204 except in compliance with Section 21.305 and as necessary to the conduct of a proceeding under this chapter." *Id.* § 21.304. The information at issue pertains to a complaint of unlawful employment discrimination that was filed with the HRC. Thus, the information at issue is generally confidential under section 21.304 of the Labor Code. However, in this instance, the requestor is a party to the complaint at issue. Section 21.305 of the Labor Code concerns the release of records to a party to a complaint filed under section 21.201 of the Labor Code and provides, in pertinent part:

(a) Except as provided by Subsection (c), the [TWC] shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to [TWC] records relating to the complaint.

(b) Except as provided by Subsection (c), 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 [TWC] records:

(1) after the final action of the [TWC]; or

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

Id. § 21.305(a)-(b). You inform us the HRC has not taken final action on the complaint at issue. You also inform us the city has no knowledge of any civil action being filed in federal court. Based on your representations and our review, we conclude the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.304 of the Labor Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 819943

Enc. Submitted documents

c: Requestor
(w/o enclosures)