



February 13, 2015

Mr. Renatto Garcia  
Assistant City Attorney  
Legal Department  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2015-03000

Dear Mr. Garcia:

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# 553548 (City File No. 1107).

The City of Corpus Christi (the "city") received a request for information pertaining to a specified Equal Employment Opportunity Commission ("EEOC") charge. 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.

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 other statutes make confidential. Section 2000e-5 of title 42 of the United States Code provides, in relevant part, the following:

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved . . . alleging that an employer . . . has engaged in an unlawful employment practice, the [EEOC] shall serve a notice of the charge . . . and shall make an investigation thereof . . . Charges shall not be made public by the [EEOC]. . . . If the [EEOC] determines after such investigation that there is reasonable cause to believe that the charge is true, the [EEOC] shall

endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the [EEOC], its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

42 U.S.C. § 2000e-5(b). Under this provision, if the EEOC had processed the discrimination charge to which the information at issue pertains, the EEOC would be prohibited from releasing information about the charge that were made. However, you inform us the city's Human Relations Department (the "department") processed the charge on behalf of the EEOC. You assert the department acted as the EEOC's agent in processing this charge and is, therefore, subject to the confidentiality requirements of section 2000e-5(b).

You explain the EEOC is authorized by statute to utilize the services of state and local fair employment practices agencies to assist in meeting its statutory mandate to enforce laws prohibiting employment discrimination. *See id.* § 2000e-4(g)(1). You state the department is a local agency authorized by section 21.152 of the Labor Code to investigate complaints of employment discrimination. You also state the department has a "work sharing agreement" with the EEOC. The United States Court of Appeals for the Fifth Circuit has acknowledged such a work sharing agreement creates a limited agency relationship between the parties. *See Griffin v. City of Dallas*, 26 F.3d 610, 612-13 (5th Cir. 1994) (holding limited designation of agency in work sharing agreement is sufficient to allow filing with EEOC to satisfy filing requirements with former Texas Commission on Human Rights).

You state in rendering performance under the work sharing agreement, the department is supervised by the EEOC's contract monitor, and the tasks the department performs and the manner in which it performs them are limited by the terms of the agreement and by EEOC rules and regulations. Under these circumstances, we agree with your assertion that under accepted agency principles, the department acts as the EEOC's agent in processing charges on behalf of the EEOC. *See Johnson v. Owens*, 629 S.W.2d 873, 875 (Tex. App.—Fort Worth 1982, writ ref'd n.r.e.) ("An essential element of proof of agency is that the alleged principal has both the right to assign the agent's task and to control the means and details of the process by which the agent will accomplish the task."). We also agree that as an agent of the EEOC, the department is bound by section 2000e-5(b) of title 42 of the United States Code and may not make public charges of discrimination that it handles on the EEOC's behalf. *See* 42 U.S.C. § 2000e-5(b); *see also McMillan v. Computer Translations Sys. & Support, Inc.*, 66 S.W.3d 477, 481 (Tex. App.—Dallas 2001, orig. proceeding) (under principles of agency and contract law, fact that principal is bound can serve to bind agent as well).

We note the requestor is the attorney of record for the respondent in the EEOC claim at issue. In *Equal Employment Opportunity Commission v. Associated Dry Goods Corporation*, 449 U.S. 590 (1981), the United States Supreme Court held the “public” to whom section 2000e-5(b) forbids disclosure of certain confidential information does not include the parties to the EEOC claim. *See* 449 U.S. at 598. Thus, the city may not withhold the submitted information from this requestor under section 552.101 of the Government Code in conjunction with section 2000e-5(b) of title 42 of the United States Code.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as follows:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the submitted W-4 forms constitute confidential tax return information under section 6103(a). Accordingly, the city must withhold the submitted W-4 forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form and its attachment in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form and its attachment are confidential pursuant to section 1324a of title 8 of the United States Code and the city must withhold them under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Upon review, we find the information we have marked consists of confidential CHRI. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has concluded some kinds of personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600, 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). Upon review, we find the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code 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).<sup>1</sup> See Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. See *id.* § 552.137(c). Upon review, we find the city must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, the city must withhold the submitted W-4 forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the submitted I-9 form and its attachment pursuant to section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection 552.137(c) of the Government Code applies. The city must release the remaining information.<sup>2</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>We note the information to be released contains social security numbers. 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 an attorney general decision under the Act. See Gov’t Code § 552.147(b).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Britni Fabian". The signature is written in a cursive, flowing style.

Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/bhf

Ref: ID# 553548

Enc. Submitted documents

c: Requestor  
(w/o enclosures)