



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 17, 2015

Ms. Aimee Alcorn  
Assistant City Attorney  
City of Corpus Christi  
Legal Department  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2015-14572

Dear Ms. Alcorn:

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# 573273 (City File No. 478).

The City of Corpus Christi (the "city") received a request for information pertaining to a specified Equal Employment Opportunity Commission ("EEOC") charge.<sup>1</sup> The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the request for information because it does not pertain to the charge at issue. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information, which we have marked, in response to this request.

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:

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<sup>1</sup>You inform us the city sent an estimate of charges to the requestor, which required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See* Gov't Code § 552.263(a). You state the city received the deposit on May 13, 2015. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

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).

Nevertheless, we note the requestor is the attorney 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 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, see Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information contains the e-mail address of a member of the public. 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>2</sup> See Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and the city does not inform us a member of the public has affirmatively consented to its release. Therefore, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code.

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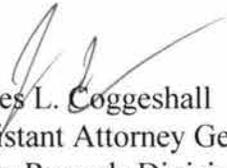
<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

To conclude, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.137 of the Government Code. The city must release the remaining responsive information.<sup>3</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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 573273

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because the requestor has a special right of access to the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor. We also note the responsive information 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 a decision from this office under the Act. Gov't Code § 552.147(b).