



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2016

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

OR2016-10241

Dear Ms. Alcorn-Reed

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# 608765 (City File No. 134).

The City of Corpus Christi (the "city") received a request for information pertaining to a specified discrimination and retaliation lawsuit filed by a named individual. We understand you are withholding some information pursuant to a previous determination issued by our office in Open Records Letter No. 2016-00831 (2016).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.² We have considered the exceptions 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:

¹Open Records Letter No. 2016-00831 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

²Although the city does not raise section 552.137 of the Government Code in its brief, we understand it to raise this exception based on its markings

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 [Equal Employment Opportunity Commission (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 chapter 611 of the Health and Safety Code. Section 611.002 provides in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find a portion of the submitted information, which we have marked, consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the city must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.³

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. 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). This office has also found personal financial information not relating to a

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. We note, however, the ruling in *Ellen* was applicable to investigations involving sexual harassment in the workplace. Upon review, we find the information at issue does not constitute a sexual harassment investigation in the employment context of the city for purposes of *Ellen*. Accordingly, we conclude the ruling in *Ellen* is not applicable in this situation, and the city may not withhold any portion of the information at issue under section 552.101 of the Government Code on that basis. However, we find some of the information at issue 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. However, we find the city failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.⁴ Gov't Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Some of the remaining information may pertain to a peace officer and is held by the city in a non-employment capacity. Thus, to the extent the individual at issue is a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175. Conversely, if the individual at issue is not a licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the city may not withhold this information under section 552.1175 of the Government Code.

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). *Id.* § 552.137(a)-(c). The e-mail addresses you have marked and the additional e-mail address we have marked are not one

⁴The 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).

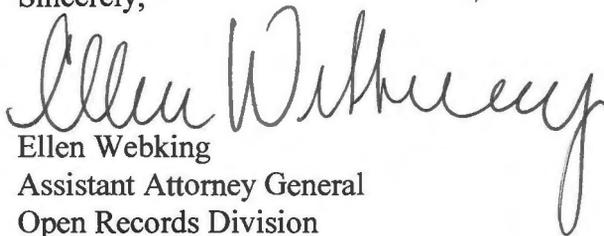
of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the city must withhold the e-mail addresses you have marked and the additional e-mail address we have marked under section 552.137, unless the owners of the addresses affirmatively consent to their release.

In summary, the city must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual at issue is a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we have marked under section 552.1175 of the Government Code. The city must withhold the e-mail addresses you have marked and the additional e-mail address we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release. The city must release the remaining information.

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, 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,


Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 608765

Enc. Submitted documents

c: Requestor
(w/o enclosures)