ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2007

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2007-13573

Dear Mr. Bounds:

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# 292274.

The City of Corpus Christi (the "city") received a request for the entire file relating to a specified charge of discrimination. You claim that the requested 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 public 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 another statute makes confidential. Section 2000e-5 of title 42 of the United States Code provides in relevant part:

> 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 charges to which the information at issue pertains, the EEOC would be prohibited from releasing information about the charges that were made. You inform us, however, that the city's human relations department (the "department") processed these charges on behalf of the EEOC. You assert that the department acts as the EEOC's agent in processing these charges and is therefore subject to the confidentiality requirements of section 2000e-5(b).

You state that 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 that the department is a local agency that is authorized by section 21.152 of the Labor Code to investigate complaints of employment discrimination. You also state that the department has a contract and "work sharing agreement" with the EEOC, which you have submitted. The agreement provides in relevant part that "the EEOC and the [department] each designate the other as its agent for the purpose of receiving and drafting charges[.]" The United States Court of Appeals for the Fifth Circuit has acknowledged that 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 that limited designation of agency in work sharing agreement is sufficient to allow filing with EEOC to satisfy filing requirements with Texas Commission on Human Rights).

You state that in rendering performance under the work sharing agreement and contract, the department is supervised by the EEOC's contract monitor, and the tasks that the department performs and the manner in which it performs them are limited by the terms of the EEOC-drafted contract and by EEOC rules and guidelines. 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* 42U.S.C.2000e-5(b); *see also McMillan v. Computer Translations Systems & Support, Inc.*, 66 S.W.3d 477, 481 (Tex. App.—Dallas 2001, no pet.) (under principles of agency and contract law, fact that

principal is bound can serve to bind agent as well). Therefore, without the respondent's consent to release the information, we conclude that the city must withhold the submitted information under section 552.101 of the Government Code as information that is made confidential by law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

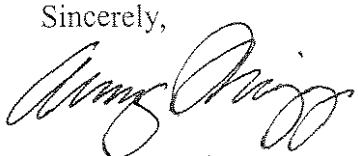
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 292274

Enc. Submitted documents

c: Mr. Brett Strand
Cornell, Smith & Mierl
1221 South MoPac Expressway, Suite 330
Austin, Texas 78746
(w/o enclosures)