ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2013

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

OR2013-10206

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# 492465 (City File No. 276).

The City of Corpus Christi (the "city") received a request for the city's Commission on Human Rights file for a named individual. 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.

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 [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 charges to which the information at issue pertains, the EEOC would be prohibited from releasing information about the charges that were made. However, you inform us the city's Human Relations Division (the "division") processed the charges on behalf of the EEOC. You assert the division acted as the EEOC's agent in processing these charges 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 division is a local agency authorized by section 21.152 of the Labor Code to investigate complaints of employment discrimination. You also state the division has a "work sharing agreement" with the EEOC. You have submitted a copy of the agreement, which provides in relevant part "the EEOC and the [division] 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 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 that in rendering performance under the work sharing agreement, the division is supervised by the EEOC's contract monitor, and the tasks the division performs and the manner in which it performs them are limited by the terms of the EEOC-drafted agreement and by EEOC rules and guidelines. Under these circumstances, we agree with your assertion that under accepted agency principles, the division 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 division 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 Systems & 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). Therefore, without the respondent's consent to release the

information at issue, we conclude the city must withhold the submitted information under section 552.101 of the Government Code as information made confidential by law.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 492465

Enc. Submitted documents

c: Requestor
(w/o enclosures)