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BOROUGH OF WEST CHESTER
PENNSYLVANIA

Human Relations Commission
Agenda

September 7, 2017 – 5:00 PM
Borough Council Chambers, Municipal Building

Current Members (3-Year Terms):

Kuhio Walters
Rev. Truman Brooks
Melissa Ford Long
Carolyn Durner
Jon Ingram

Staff Members:

Michael Cotter, Borough Manager
Scott Bohn, Chief of Police, WCPD

1. Call to order
2. “Meet and Greet” of current members
3. Elect a Chairperson and a Vice-Chairperson
4. Consider the Pennsylvania Human Relations Commission (PHRC) request to enter into a cooperation agreement with the West Chester Human Relations Commission (WCHRC) and review the “Memorandum of Understanding” that has been forwarded for execution (attached).
5. New Business
6. Public Comment
7. Adjourn

MEMORANDUM OF UNDERSTANDING

BETWEEN

The Pennsylvania Human Relations Commission (hereinafter "PHRC") and the West Chester Human Relations Commission (hereinafter "WCHRC").

This Memorandum of Understanding is made effective on the _____ day of _____, 2017.

WHEREAS, in accordance with applicable law, it is the intent of both the PHRC and WCHRC that no person will be denied the opportunity to file allegations of unlawful discrimination with either the PHRC or the WCHRC; and

WHEREAS, consistent with applicable law, it is the desire of both Commissions to maximize the service provided to the public; and

WHEREAS, in order to avoid duplication of effort, Section 12.1(e) of the Pennsylvania Human Relations Act (hereinafter "PHRA") provides that notification shall be given by the WCHRC to the PHRC when an individual files a complaint with the WCHRC that also comes under the PHRC's jurisdiction. Similarly, Section 7(n) of the PHRA provides that the PHRC shall notify the WCHRC of complaints received by the PHRC that would also come under the WCHRC's jurisdiction; and

WHEREAS, under the complaint process created by the Ordinance that established the WCHRC, when the WCHRC receives a complaint, the WCHRC must notify the one charged with a discriminatory act or practice (hereinafter the "Respondent") that a complaint has been filed. Once the Respondent's answer has been received, WCHRC is to invite both the Respondent and Complainant to mediate. If both parties consent to mediation, WCHRC will attempt to facilitate mediation.

WHEREAS, in addition to WCHRC's Ordinance granting WCHRC the authority to facilitate mediation, WCHRC has the option to elect expanded procedures. If WCHRC elects expanded procedures, WCHRC will conduct an investigation to determine whether there is or is not probable cause to proceed to a hearing where WCHRC can find either that the allegation of discrimination is valid or dismiss a case if no discrimination is found.

WHEREAS, Section 3 of the PHRA declares that being free from discrimination is a civil right "which shall be enforceable as set forth in Act."

WHEREAS, Section 12(c)(1) of the PHRA prohibits those who have filed complaints with the PHRC from filing an action in the courts of common pleas of the Commonwealth until the PHRC dismisses a complaint or a year has passed. In other words, to seek remedy for a PHRA violation, an individual must exhaust their administrative remedies before attempting to file in court.

WHEREAS, Section 12.1(a) of the PHRA authorizes legislative bodies of political subdivisions to establish local Human Relations Commissions.

WHEREAS, Section 12.1(d) of the PHRA gives such legislative bodies the authority to grant to local HRCs powers and duties similar to those exercised by the PHRC.

WHEREAS, because the Borough of West Chester Human Relations Ordinance grants WCHRC authority limited to mediation if WCHRC does not elect expanded procedures, given the unsettled status of Pennsylvania case law, there is a strong likelihood that an individual who has filed their civil rights/discrimination claim with WCHRC only, cannot proceed to common pleas court regarding any action that would fall under the PHRA's jurisdiction.

WHEREAS, under the ordinance creating the WCHRC, claims filed with WCHRC that exceed the jurisdiction of the PHRC could proceed to common pleas

court when the matter has not been resolved through operation of WCHRC's procedures.

NOW THEREFORE, it is stipulated and agreed between the PHRC and the WCHRC as follows:

1. When a person files a complaint with the WCHRC that involves alleged acts of discrimination prohibited by PHRA, the WCHRC shall inform the person that the WCHRC may also accept the individual's PHRC complaint for filing.
 - a. When a person who filed a complaint with the WCHRC expresses their wish to also file their complaint with the PHRC, WCHRC will advise the person that normally, a complaint must be filed with the PHRC within 180 days of the alleged act of harm.
 - b. The WCHRC shall either provide the person with a copy of the relevant PHRC Questionnaire or give the person information about filing a claim by completing the PHRC's online questionnaire on the PHRC's website. A sample notice is attached as Exhibit "A."
 - c. In the event that the person wishes to complete a paper copy of the questionnaire, in order to protect the person's rights under the PHRA, once the person completes the PHRC Questionnaire, WCHRC will date stamp and expeditiously forward the completed PHRC Questionnaire to the PHRC's Central Offices, located at 333 Market Street, 8th Floor, Harrisburg, PA 17101-2210.
 - d. When a case is filed with both WCHRC and the PHRC, WCHRC will provide the named Respondent with notice of the dual filing and document retention requirements. A sample notice is attached as Exhibit "B."
 - e. Upon the PHRC's receipt of a dual filed complaint, the PHRC will time stamp the Questionnaire "complaint" and maintain a hard copy of the complaint in a separate folder bearing WCHRC's name.

PHRC will send notice of receipt and a document retention notice to the Complainant and Respondent.

- f. The PHRC will hold the complaint for a period of six months while WCHRC engages in dispute resolution and potential expanded procedures activities authorized by WCHRC's Ordinance.
 - g. For complaints that are received by WCHRC, WCHRC will offer mediation consistent with the WCHRC Ordinance.
 - h. WCHRC will notify the PHRC as soon as a matter has been resolved or as soon as the WCHRC determines that mediation has failed and expanded procedures have not been elected. The WCHRC shall give the PHRC this notice no later than 6 months after the WCHRC's receipt of the complaint.
 - i. When the WCHRC notifies the PHRC that mediation failed to resolve the complaint and WCHRC has elected not to adopt expanded procedures, the PHRC will docket, serve and initiate an investigation of the allegation(s) and otherwise follow the PHRC's normal case processing procedures.
 - j. If WCHRC elects to adopt expanded procedures and at any time for any reason decides that WCHRC cannot complete an investigation or conduct a hearing, WCHRC will notify the PHRC and the PHRC will docket, serve and commence an investigation and otherwise follow the PHRC's normal processing procedures. If WCHRC began an investigation, WCHRC will forward to the PHRC all of WCHRC's investigatory notes and findings.
 - k. At the conclusion of the PHRC's action on the complaint, the PHRC will provide the WCHRC with a report.
2. The WCHRC will also inform all persons who file a complaint with the WCHRC of their possible right to dual file their complaint with the Equal Employment Opportunity Commission (EEOC) (employment complaints

only) and if the matter is a housing complaint the WCHRC will inform the person of the possible right to also file the complaint with Department of Housing and Urban Development (HUD.)

a. EEOC's address and contact information is as follows:

Equal Employment Opportunity Commission

Philadelphia District Office

127 North Fourth Street

Philadelphia, PA 19106

Phone - (215) 597-9350 or toll free - 800-USA-

EEOC - EEOC's TDD Number for individuals with hearing impairments is (202) 634-7057

b. HUD - contact with HUD is through HUD's website

3. The WCHRC shall sign and abide by the "Information Sharing and Confidentiality Agreement" attached as Exhibit "C."
4. In addition to the dual filed complaints discussed in paragraph 2 above, the WCHRC will provide the PHRC notice of complaints within the PHRC's jurisdiction when such complaints are received.
5. Provided that the WCHRC signs and complies with the Information Sharing and Confidentiality Agreement, the PHRC will make a good faith effort to ascertain those complaints that have been filed with the PHRC that are also covered by the WCHRC Ordinance.
 - a. The PHRC will generate a report containing the names of the parties and general nature of the allegations.
 - b. The PHRC will provide a report semi-annually, during the month of January and the month of July.
6. Should WCHRC's Ordinance be modified in anyway, WCHRC will, within 30 days, give the PHRC notice of the modification and its contents. Should the PHRA be modified in anyway, the PHRC will, within 30 days, give WCHRC notice of the modification and its contents.

7. Nothing contained in this Memorandum of Understanding shall be construed in such a way as to negate or violate the policies or regulations of either Commission. Further, this Memorandum of Understanding is subject to such amendment or modification as may be required from time to time to meet any changes in applicable law, or as agreed to by the parties.
8. Any amendment or modification to this Memorandum of Understanding must be in writing and signed by all parties hereto.
9. The provisions of this Memorandum of Understanding are severable and if any of its section, clauses or sentences shall be held invalid for any reason, such provisions shall not affect any of the remaining sections, clauses or sentences.
10. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of Pennsylvania. Should a dispute arise, the parties agree to first attempt to resolve the issue informally between agencies, then failing to resolve the matter informally, to seek relief in a court of competent jurisdiction.
11. This Memorandum of Understanding shall be in effect for a period of five years from the date signed by the parties.
12. Either party can cancel this Memorandum of Understanding at any time provided the party provides 30 days written notice.
13. This Memorandum of Understanding shall automatically renew unless, within 30 days prior to the renewal date, either WCHRC or the PHRC provides written notice of nonrenewal.
14. Notice shall be effective upon a writing submitted by the Chairperson of the WCHRC or the Executive Director of the PHRC and sent by first class mail to the other party at the following address:

- a. Chairperson WCHRC
c/o Borough Manager
Borough of West Chester
401 East Gay Street
West Chester, PA 19380
- b. Executive Director, PHRC
333 Market Street, 8th Floor
Harrisburg, PA 17101-2210

Signed as set forth below:

BY _____ Date: _____

M. Joel Bolstein, Interim Chair
Pa. Human Relations Commission

BY: _____ Date: _____

West Chester HRC
Chairperson

By: _____ Date: _____

JoAnn Edwards, Executive Director
Pa. Human Relations Commission

APPROVED AS TO FORM AND LEGALITY

BY _____ Date: _____

PHRC Chief Counsel

BY _____ Date: _____

Deputy Attorney General

EXHIBIT "A"

NOTICE

In order to preserve your rights, you must also file a Complaint with the PHRC. Normally, to be timely, a **Complaint must be filed within 180 days.**

You may file a Complaint with the PHRC by requesting a copy of the PHRC's relevant Questionnaire – completing the Questionnaire and forwarding the completed Questionnaire to the PHRC's Philadelphia regional office:

PHRC - Intake Division
110 North 8th Street, Suite 501
Philadelphia, PA 19107

You may also file an employment Complaint with the PHRC by filing your Complaint online. The procedure to file online is as follows:

PHRC Website – www.phrc.pa.gov

Left hand column – click – "Online Complaint forms"

Scroll down to "New" – click on "you can also file an employment complaint online"

Create a Keystone ID by following instructions "New User"

If you experience any difficulty using the online form, please contact the PHRC's Central Office at 717-787-4410.

Exhibit B Records Retention Notice

Date

Name

Address

Re: Complaint name v. Respondent name (and case number if WCHRC uses one)

Dear _____(Complaint and or Respondent):

This is to notify you that the complaint that has been filed with West Chester Human Relations Commission (WCHRC) has been forwarded to the Pennsylvania Human Relations Commission (PHRC) for filing. Because this matter has been filed with both WCHRC and the PHRC, you are notified that you must retain any and all payroll, personnel or other records that may be related to the statements in the complaint until the final disposition of the matter by the PHRC; See 16 Pa. Code §41.82.

Sincerely,

West Chester Human Relations Commission

Information Sharing and Confidentiality Agreement BETWEEN
The Pennsylvania Human Relations Commission
and the _____ Human Relations Commission

This Information Sharing and Confidentiality Agreement ("IS&C Agreement") made effective on the ___ day of _____ (the Effective Date") by and between the Pennsylvania Human Relations Commission; (hereinafter "PHRC" or the "Commission") and the _____ (hereinafter "LHRC"), collectively referred to as "the parties to this IS&C Agreement").

WHEREAS, Section 12.1(a) of the Pennsylvania Human Relations Act (PHRA) states:

The legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment of membership in and support of a Local Human Relations Commission. The number and qualifications of the members of any local commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the legislative body, except that no such member shall hold office in any political party. Members of a local commission shall serve without salary but may be paid expenses incurred in the performance of their duties.

And, WHEREAS, Section 12.1(d) of the PHRA states:

The legislative bodies of political subdivisions shall have the authority to grant to local commissions powers and duties similar to those now exercised by the Pennsylvania Human Relations Commission under the provisions of this act;

And, WHEREAS, Section 12.1 (e) of the PHRA states:

The local human relations commission shall notify the Pennsylvania Human Relations Commission of complaints received involving discriminatory acts within that commission's jurisdiction.

And, WHEREAS, Section 7 (n) of the PHRA provides that among the Commission's powers and duties are the following:

To notify local human relations commissions of complaints received by the Pennsylvania Human Relations Commission involving persons within a commission's jurisdiction. The Pennsylvania Human Relations Commission may enter into work-sharing agreements with those local commissions having comparable jurisdiction and enforcement authority.

And, WHEREAS, complaint information and other information received by the PHRC during its investigation of a claim but before a public hearing is confidential information exempt from disclosure under the Pennsylvania Right to Know Law, and federal employment discrimination laws, including Title VII and the Americans with Disabilities Act;

And, WHEREAS, the LHRC has been duly established by local ordinance as set forth in the Section 12.1 of the PHRA and, as a result has the legal authority to receive and protect the confidentiality of information regarding information about complaints received from the PHRC;

And, WHEREAS, the PHRC and the LHRC intend to protect confidential, sensitive, privileged or otherwise protected information that is shared between them as a result of complaint notification;

NOW THEREFORE, intending to be legally bound hereby, it is Stipulated and Agreed between the parties to this Information Sharing and Confidentiality Agreement (IS&C Agreement) as follows:

A. Information Sharing Agreement Provisions

- a. The LHRC agrees, consistent with Section 12.1(e) of the PHRA, to notify the PHRC of all complaints received involving discriminatory acts within the PHRC's jurisdiction.
- b. The LHRC shall notify the PHRC as follows:
 - i. Name and address of the parties and specific type of discrimination claim
 - ii. LHRC shall provide this information on a monthly basis to PHRC's Central office at 333 Market Street 8th Floor Harrisburg PA 17101

- iii. LHRC will send a copy of the complaint by mail to PHRC's central office at 333 Market Street 8th Floor Harrisburg PA 17101
- c. The PHRC agrees, consistent with Section 7(n) of the PHRA to notify the LHRC of all complaints received regarding discriminatory acts within the PHRC's jurisdiction.
 - i. PHRC will provide name and address of the parties and the type of claim
 - ii. PHRC will provide the information set forth in A.C.i above two times per year, during the month of January and during the month of July..
 - iii. PHRC will send this list of parties' names, addresses and claims by mail to the address of the LHRC.

B. Confidentiality Provisions

1. Any information that is provided by the PHRC or the LHRC will be presumed to be regarded as and treated by the other party as confidential information.
2. When information is provided, the Receiving Entity (PHRC or LHRC) shall not to disclose confidential information to any third party, without the prior written consent of the Providing Entity (PHRC or LHRC) or a court order.
3. The PHRC and LHRC agree that their sharing of confidential information under this Agreement shall not constitute public disclosure. The PHRC and LHRC further agree that, by their sharing of confidential information under this agreement, they in no way intend to waive confidentiality or an applicable privilege or other legal protection-including but not limited to, the attorney-client privilege, the deliberative process privilege, or the work product doctrine – nor does this Agreement waive or alter any provisions of any applicable laws relating to nonpublic information. The Parties expressly reserve all evidentiary privileges, immunities, and other legal protections applicable to the information shared under this Agreement.

4. The Receiving Entity will take all actions reasonably necessary to protect and preserve the confidentiality of any Confidential Information and any applicable privileges or other legal protections and to protect any personally identifying information contained therein. Such actions include, but are not limited to:
 - a. Restricting access to Confidential Information to only those officers or employees of the Receiving Entity who have a bona fide need for such information in carrying out the Receiving Entity's responsibilities;
 - b. Informing its officers, employees, or agents who are provided access to such Confidential Information of the Receiving Entity's responsibilities under this Agreement; and
 - c. Establishing appropriate administrative, technical, and physical safeguards for maintaining such Confidential Information.

5. If the Receiving Entity is served with a subpoena or other similar legal process that purports to require production of Confidential Information, or if the Receiving Entity receives a request for Confidential Information or an appeal under the Right to Know Law or equivalent local, state or federal laws, the Receiving Entity will:
 - a. Immediately notify the Providing Entity and provide to it copies of such subpoena, other process, request or appeal, including all attachments;
 - b. Afford the Providing Entity the opportunity to take steps to preserve, protect, and maintain the confidentiality of such information or any applicable privileges or other legal protections, and to prevent the disclosure of any records as defined by the Privacy Act, 5 U.S.C. § 552a(a)(4), contained therein;

- c. Cooperate fully with the Providing Entity to preserve, protect, and maintain the confidentiality of such information or any applicable privileges or other legal protections, and to prevent the disclosure of any records as defined by the Privacy Act, 5 U.S.C. § 552a(a)(4), contained therein;
 - d. Notify the party seeking such information that the information is considered the property of the Providing Entity and that subpoenas, legal process, requests, or appeals for such information must be made directly to the Providing Entity in accordance with applicable law;
 - e. Resist, to the extent legally permissible practicable, production of such information pending receipt of written consent from the Providing Entity to the production of that information; and
 - f. Consent to any application by the Providing Entity to intervene in any action to preserve, protect, and maintain the confidentiality of such information or any applicable privileges or other legal protections, and to prevent the disclosure of any records.
6. Either party to this Agreement may terminate this IS&C Agreement with respect to the prospective sharing of information by providing thirty (30) calendar days advance written notice to the other party. In the event of such termination, any information previously obtained by a Receiving Entity under this Agreement, if not returned, will remain the property of the Providing Entity, and the Receiving Entity will continue to observe all terms and conditions of this Agreement with respect to such information.
7. As soon as practicable after execution of this IS&C Agreement, both the PHRC and the LHRC will advise the other party of the name, title, and contact information, including mailing addresses, e-mail addresses, telephone numbers, and fax numbers, for the designated official(s) who will serve as that party's point of contact for purposes of exchanges of information regarding pending complaints.

8. Notice of change in statutory authorization: The LHRC will notify the PHRC of all changes to the Enabling Ordinance that controls the LHRC. PHRC will notify the LHRC of all changes to the PHRA.

9. Notice: Notice shall be effective upon a writing submitted by the LHRC Chair or the Executive Director of the PHRC and sent by first class mail to the other party at the following address:

a. Chairperson WCHRC, c/o Borough Manager, West Chester Borough, 401 East Gay Street, West Chester, PA 19380

b. Enforcement Director, PHRC , 333 Market Street, 8th floor, Harrisburg, PA 17101

JoAnn L. Edwards, Executive Director
PA Human Relations Commission

Date

WCHRC Chair

Date