



# Brenner, Saltzman & Wallman LLP

Attorneys at Law – Established 1963

Newton D. Brenner  
(1963-2006)

Stephen L. Saltzman  
Marc A. Wallman  
David R. Schaefer  
Donald W. Anderson  
Samuel M. Hurwitz  
Wayne A. Martino  
Mitchell S. Jaffe  
Carolyn W. Kone  
Brian P. Daniels  
George Brencher IV  
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Ronald A. Soccoli, Jr.  
Michael T. Cretella

Diana Michta

Of Counsel:  
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William A. Aniskovich  
Kathryn D. Hallen  
Amanda T. Oberg  
John F. Strother  
Danielle M. Bercury

August 17, 2020

Michelle Duprey  
Director  
Department of Disability Services  
City of New Haven  
165 Church St.  
New Haven, CT 06510

Dear Michelle,

Recently, you raised the question of whether listing the name of an applicant for disability retirement benefits on the Fund Trustees' meeting agendas violates the ADA. We have researched this question and have concluded that it does not violate the ADA.

There are no confidentiality requirements in the ADA applicable to municipal pension funds. The only confidentiality requirements in the ADA are contained in Title I, which applies to employers. Title II of the ADA, which applies to state and local governments, and Title III, which applies to private businesses and places of public accommodation, do not contain confidentiality requirements. Since the Pension Funds are separate entities from the municipal employer, Title I does not apply.

CERF and P&F (collectively the "Pension Funds") are most likely covered under Title II of the ADA as "public entities." 42 U.S.C. § 12131(1) defines a "public entity" to mean "(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation...." The Pension Fund Trustees determine eligibility for pension and disability benefits for City employees, and the Trustees invest the funds to pay out benefits. As such, the Pension Funds are most likely to be considered "public entities" under Title II. *See Piquard v. City of E. Peoria*, 887 F. Supp. 1106, 1129 (C.D. Ill. 1995) (holding that a police pension fund was used as a means by which the city determined eligibility for pension and disability benefits, and therefore it was a "public entity" for purposes of the ADA). *See also Holmes v. City of Aurora*, 1993 U.S. Dist. LEXIS 17368, 1995 WL 21606, \*4 (N.D.Ill. January 18, 1995) (holding a police pension fund to be a "public entity" under Title II of the ADA).

If Title I were applicable to the Pension Funds, the publication of applicants' names would still not be unlawful, because the applicants voluntarily disclosed their information. In order to violate the ADA under Title I, the information disclosed must be considered "confidential" information, and the disclosure of the "confidential" information must be considered "improper."



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Health information is only confidential under the ADA if it was provided in response to an employer's medical-related inquiry. However, if the employee responds to a non-medical inquiry by disclosing his or her health information, or if the employee voluntarily discloses his or her disability, the information is not considered "confidential." The Fifth, Seventh, and Tenth Circuits have held that voluntarily-released health information is not protected under the ADA. *Taylor v. City of Shreveport*, 798 F.3d 276 (5th Cir. 2015); *E.E.O.C. v. Thrivent Financial for Lutherans*, 700 F.3d 1044 (7th Cir. 2012); *E.E.O.C. v. C.R. England, Inc.*, 644 F.3d 1028, 1046-1048 (10th Cir. 2011). Likewise, when an employee submits a reasonable accommodation request along with medical information on his or her own volition, the ADA does not treat such disclosure as confidential because it is considered voluntary. *See Dean v. City of New Orleans*, 2012 WL 2564954 (E.D. La. July 2, 2012) (holding that if an employer discloses medical information that was voluntarily offered by an employee, outside of the context of an authorized employment-related medical examination or inquiry, then the employer is not subject to liability under § 42 U.S.C. § 12112(d)(4)(B)). Here, applicants similarly voluntarily disclosed their information by applying for disability benefits. Due to the disclosures being "voluntary", even if Title I were to apply to the Pension Funds, the Pension Funds' publication of names of applicants for disability benefits is not an "improper disclosure."

Additionally, I have checked with counsel for some other pension funds in Connecticut, and I have been told that in these municipalities, the names of applicants for disability pension benefits are similarly listed on the agendas for the pension boards that consider such applications.

Sincerely,

A handwritten signature in blue ink that reads "Carolyn".

Carolyn W. Kone

cc: Leanna Ambersley  
Jerome Sagnella

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