



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1997

Mr. Randall C. Stump
Stump, Stump & Stump
P.O. Box 286
Georgetown, Texas 78627

OR97-0941

Dear Mr. Stump:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105115.

The City of Bartlett (the "city") received a request for copies of "any and all letters of complaint concerning any & all city departments . . . but not limited to, complaints of sexual harassment . . . from 1993→ present." You claim that the requested information is excepted from disclosure under sections 552.102 and 552.103 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

This office has previously established that the requested information relates to pending and reasonably anticipated litigation. *See* Open Records Decision Letter No.96-2458. We note, however, among the submitted materials in this request, there are documents to which the opposing party may have already had access. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. To that extent we shall review the submitted information and apply the exceptions you raise to that information which should be released as it has been obtained from or provided to the opposing party.

¹Although you initially raise 552.107, 552.111 and 552.305 among the exceptions in your original request letter to this office, you do not present any arguments to this office detailing your exceptions so you may not withhold any of the information under those exceptions.

²We note that you do not represent that the documentation submitted is a representative sample of the information and assume that any other complainants of related documents, if any, have been provided to the requestor.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

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. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

To the extent the documents that have previously been disclosed to the plaintiff contain the identities of witnesses or victims in sexual harassment matters, the identities of the witnesses and victims are excepted under *Ellen*, common-law privacy, and section 552.101. Open Records Decision No. 400 (1983) at 2 (information that is confidential by law may not be released even if previously disclosed). However, you may not withhold information under section 552.101 on the basis of protecting a requestor's own common-law privacy interests. Open Records Decision No. 481 (1987) at 4. Thus, of the information that has previously been disclosed to the plaintiff and in the instant file denoted as Exhibits B-1, B-2, B-4, C-1, C-2, and C-3, we have marked the information which would identify victims and witnesses of sexual harassment and you must redact the information marked before the release of the documents. We observe that Exhibits B-1 and B-4 must be withheld in their entirety. We note that you may not withhold information that would identify the perpetrators. Additionally, we note that the public interest in knowing how a police department has resolved complaints against a police officer ordinarily outweighs the officer's privacy interest, even if some complaints are found to be "unfounded" or "not sustained." Open Records Decision No. 484 (1987)

Next, section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Accordingly, we have marked the information you must redact contained within the documents which reveal the information subject to exception under 552.117. You must release the remaining documents under Exhibits B-2, C-1, C-2 and C-3 subject to the marked redactions.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal line extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 105115

Enclosures: Submitted documents

cc: Ms. Vyki Robbins
P.O. Box 221
Bartlett, Texas 76511
(w/o enclosures)

