



September 7, 1999

Mr. Jim D. McLeroy
City Attorney
City of Sulphur Springs
P.O. Box 657
Sulphur Springs, Texas 75483

OR99-2481

Dear Mr. McLeroy:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act chapter 552 of the Government Code. Your request was assigned ID# 127206.

The City of Sulphur Springs (the "city") received a request for documents related to the city's fire chief. You state that you have released the fire chief's resignation letter. However, you claim that the submitted investigatory documents are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to determine whether information is private and excepted from disclosure under common-law privacy, which is encompassed in sections 552.101 and 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person, and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

The information at issue pertains solely to an employee's actions while acting as a public servant and the conditions for his continued employment, and as such cannot be deemed to be outside the realm of public interest. Therefore, we conclude that the fire chief has no privacy interest in the submitted documents. Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

We note, however, that the submitted documents contain allegations of sexual harassment. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court

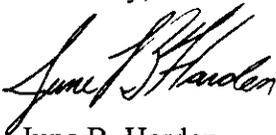
addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions 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.*

In accordance with *Ellen*, the city must withhold information which would tend to identify the witnesses and victims of any alleged sexual harassment discussed within the documents. We have marked the information which must be withheld. The remaining information must be released.

We note, however, that some of the information subject to release may be protected by section 552.117. Section 552.117 excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family member information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 127206

Encl. Marked documents

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