



December 18, 2001

Ms. April M. Virnig  
Taylor Olson Adkins Sralla Elam  
6000 Western Place, Suite 200  
I-30 at Bryant-Irvin Road  
Fort Worth, Texas 76107-4654

OR2001-5954

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156296.

The City of Lake Worth (the "city") received a request for information relating to three internal affairs cases. You state that the city has released all of the requested information relating to case no. 1-188-09072001 and some of the information relating to case no. 2-027-05292000. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the submitted documents include two written requests for copies of complaints against a city employee. Both of these requests are addressed to the city police chief and dated August 13, 2001. Our files do not reflect that the city requested an attorney general decision in connection with either of these requests. You have not referred to these requests in asking for this decision. We therefore assume that the city has released the information that is responsive to these requests. If not, then the city must do so at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).*

Next, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, all of the submitted information constitutes completed investigations made of, for, or by the city. Therefore, the city must release this information under section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. Section 552.111 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111). As such, section 552.111 is not other law that makes information confidential for the purposes of section 552.022. Therefore, we will not address the city's claim under section 552.111.

You claim that the submitted investigation files, which include a third-party investigator's report, are confidential under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right of privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. 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 applied the common-law right of privacy addressed in *Industrial Foundation* to an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does 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.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the summary must be released under *Ellen*, but the identities of the victims and witnesses must be redacted, and their detailed statements must be withheld from disclosure. *See also* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, all of the information relating to the investigation ordinarily must be released, with the exception of information that would tend to identify the victims and witnesses. In either

case, the identity of the individual accused of sexual harassment is not protected from disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

In this instance, *Ellen* is applicable to both investigation files, including the third-party investigator's report. We conclude, however, that these files do not contain an adequate summary of these investigations. Therefore, the city must release the investigation files, with the exception of the victim and witness information that is private under section 552.101. We have marked the information that identifies the witnesses and one of the sexual harassment victims. The city must withhold the marked information under section 552.101 in conjunction with *Ellen*. The requestor, as the other victim, has a special right of access to her own private information under section 552.023 of the Government Code.<sup>1</sup> Therefore, the information that identifies the requestor is not excepted from disclosure in this instance under section 552.101.<sup>2</sup> As section 552.101 of the Government Code is dispositive, we do not address your arguments under sections 552.102 and 552.108.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

---

<sup>1</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See also* Open Records Decision No. 481 at 4 (1987) (stating that privacy theories are not implicated when an individual asks a governmental body to provide him with information concerning himself).

<sup>2</sup>We note, however, that if the city receives another request for this same information from a person who would not have a special right of access to it, the city should resubmit this information and request another ruling.

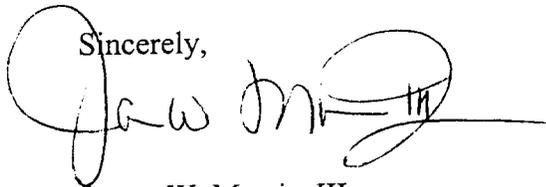
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 156296

Enc: Marked documents