



April 1, 2002

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2002-1580

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160543.

The City of Fort Worth (the "city") received a request for a specific sexual harassment investigation, disciplinary suspension letters and letters of reprimand issued to communications employees since January 1, 1999, information relating to a named employee, an investigation into alleged favoritism by supervisors in the communications division, and all complaints filed by communications employees against other employees or supervisors since January 1, 1999. You indicate that the city has released some of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common-law right of privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931

¹In your initial correspondence with this office, you also raised sections 552.103, 552.107, and 552.111 of the Government Code as possible exceptions to the disclosure of the requested information. However, you did not submit any arguments explaining why these exceptions apply to the requested information. Therefore, we do not address whether any of the submitted information is excepted from disclosure under sections 552.103, 552.107, or 552.111. See Gov't Code §§ 552.301(e), .302.

(1977). The *Industrial Foundation* court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common-law privacy 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.*

You indicate that all of the submitted documents in Exhibit C pertain to sexual harassment investigations. You contend that, in each case, the executive summary of the investigation constitutes an adequate summary of the sexual harassment claims and investigations. Having reviewed the submitted executive summaries that you have marked for release, we find that the summaries satisfy the legitimate public interest in accordance with *Ellen*. Therefore, the city must release the executive summaries with the exception of the identifying information of the victims and witnesses and other information discussed below. The city must also release statements of the accused individuals. We have marked the summaries and the accuseds' statements that must generally be released. The city must withhold the remainder of the submitted information relating to the sexual harassment investigations under section 552.101 and common-law privacy. We note that the submitted information contains documents that do not appear to relate to a sexual harassment investigation, nor do you explain how these documents relate to the sexual harassment investigation. This information, which we have marked for release, is not confidential pursuant to *Ellen* and common-law privacy.

With respect to the information that is not confidential pursuant to *Ellen*, we note that some of the information is still confidential under common-law privacy. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have marked the additional information that is confidential under common-law privacy.

We further note that some of the documents marked for release contain information that may be protected under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family

member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the city must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The city may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. We have marked the information that may be protected under section 552.117.

In summary, you must withhold most of the submitted information pursuant to *Morales v. Ellen* and common-law privacy. We have marked the documents that are not protected under *Ellen*. These documents must be released, except for the names of sexual harassment victims and witnesses, other information protected under common-law privacy, and, to the extent the employee timely elected to keep his or her information confidential, employees' home addresses and telephone numbers, social security numbers, and family member information.

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).

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); *Texas Department of Public 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 160543

Enc: Submitted documents

c: Mr. Terry Daffron Hickey
313 Main Street
Fort Worth, Texas 76102
(w/o enclosures)