



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2003

Ms. Michele Austin  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2003-7788

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190232.

The City of Houston (the "city") received a request for:

1. For the period January 1, 1998 through present, all documents indicating any funds received by the City's Office of Inspector General ("OIG") from the City's Public Works and Engineering Department ("PWE");
2. For the period January 1, 1998 through present, all documents indicating any PWE personnel assigned to work in OIG; and
3. For the period January 1, 1998 through present, all documents pertaining to any investigation of PWE by OIG, including any OIG report of such investigation.

We note that it does not appear that you have submitted information responsive to category one of the request. To the extent such information exists, we presume you have released it. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302. You claim that certain information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You first argue that portions of Exhibits 2 and 3 are confidential because they pertain to allegations of sexual harassment. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by the common law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied the common-law right to privacy addressed in *Industrial Foundation* to an investigation of allegations of 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.* In accordance with *Ellen*, this office typically has required the release of a document analogous to the conclusions of the board of inquiry in *Ellen*, but has held that a governmental body must withhold any information that would tend to identify the victims and witnesses of alleged sexual harassment. See Open Records Decision Nos. 393 (1983), 339 (1982).

In this instance, the submitted information includes summaries of the OIG's investigations of each of the allegations of sexual harassment and statements by the accused individuals in response to the allegations. Upon careful review of the submitted information, we conclude that the OIG's investigation summaries are analogous to the conclusions of the board of inquiry, the release of which was upheld in *Ellen*. Accordingly, we conclude that the city must release the OIG's summaries of the investigations and the accused individuals' statements to the requestor. We have marked these documents for your convenience. In doing so, however, the city must withhold any information that would tend to identify the victims and witnesses of alleged sexual harassment. See *Ellen*, 840 S.W.2d at 525. The identity of the individual accused of sexual harassment is not protected from public disclosure, as common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about the employee's job performance. See Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). You must withhold the information in the investigation summaries and the statements of the accused individuals that we have marked under section 552.101 in conjunction with common-law privacy. You must also withhold the remainder of the documents related to the investigations.

In addition, we note that the information that you must release from Exhibit 3 contains information that is potentially confidential under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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(a)(1) 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 not withhold an employee's personal information under section 552.117 if he did not make a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was received. If the employee complied with section 552.024, the city must withhold the information we have marked under section 552.117(a)(1).

You next argue that Exhibit 4 is excepted by section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand that Exhibit 4 pertains to an investigation conducted by the Criminal Investigations Unit of the OIG. We further understand you to assert that Exhibit 4 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit 4.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit 4 from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, you must release from Exhibits 2 and 3 the investigation summaries and statements of the accused individuals, which we have marked. However, we have marked some information within these documents that is confidential under section 552.101 in conjunction with common-law privacy and some information that is potentially confidential under section 552.117(a)(1). You must withhold the remaining information in Exhibits 2 and 3 under section 552.101 and common-law privacy. You may withhold Exhibit 4, with the exception of basic information, under section 552.108(a)(2).

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).

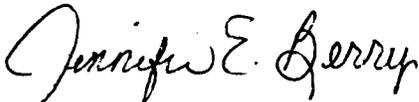
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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. 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,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 190232

Enc: Submitted documents

c: Mr. Scott Newar  
1135 McFadden  
Beaumont, Texas 77701  
(w/o enclosures)