ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2005

Mr. Wayne D. Haglund, P.C.
Attorney at Law
P.O. Box 713
Lufkin, Texas 75902-0713

OR2005-05412

Dear Mr. Haglund:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 226320.

The Tyler County Water Supply Corporation (the "corporation"), which you represent, received a request for the agendas and minutes from six corporation meetings, the financial audit for the year 2004, and a copy of the complaint filed against a named field supervisor. You state that the corporation has already released some of the documents to the requestor, but you claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 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 Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated 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. 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. Additionally, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common-law privacy. *See*

Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). We have marked the personal financial information that must be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

The remaining submitted documents involve allegations of sexual harassment. Although information relating to a sexual harassment claim involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986); *see also* 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), 423 at 2 (1984) (scope of public employee privacy is narrow), 329 (1982) (reasons for employee's resignation are not ordinarily excepted by constitutional or common law privacy).

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.*

Because there is no adequate summary of the investigation, you must release the submitted information related to the sexual harassment allegations.[1] However, based on *Ellen*, the corporation must withhold the identities of the victim and the witnesses. We have marked the information that must be withheld. We note that, in this case, the requestor is identified in the submitted documents. Information identifying the requestor may not be withheld under section 552.101 on the basis of common-law privacy. *See* Gov't Code § 552.023

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[1]You inform this office that the corporation "has previously released summary information regarding the complaints to the *Beaumont Enterprise*." However, you have not submitted this summary for our review. If the summary existed on the date you received this request for information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances); *see also* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision Nos. 490 (1988), 463 (1987) (if governmental body voluntarily releases information to one member of public, the predecessor to the Act's exceptions to disclosure are waived unless information is deemed confidential). We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information.

(person has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself).

We finally note that the submitted documents related to the sexual harassment allegations may contain information that is excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code 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 timely elect to keep this information confidential pursuant to 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 received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the corporation may only withhold information under section 552.117 on behalf of current or former officials or employees who elected to keep information confidential pursuant to section 552.024 prior to the date on which the request for this information was made. You do not inform us whether the employee whose information appears in the submitted documents elected to keep such information confidential pursuant to section 552.024 prior to the date the corporation received the present request. Thus, in the event the employee at issue timely elected to keep the information confidential, we have marked information that the corporation must withhold under section 552.117(a)(1) of the Government Code. If, however, the employee did not make a timely election, the corporation may not withhold this information under section 552.117(a)(1).

In summary, we have marked the personal financial information that must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. We have marked additional information that must be withheld under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. Provided the corporation employee at issue timely elected to keep his personal information confidential, the corporation must withhold the information we have marked in the submitted documents pursuant to section 552.117(a)(1). Otherwise, the information may not be withheld under section 552.117(a)(1). The remaining submitted information must be released to the requestor.

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).

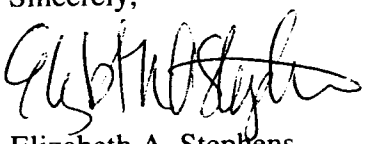
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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. 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,



Elizabeth A. Stephens
Assistant Attorney General
Open Records Division

EAS/krl

Ref: ID#226320

Enc. Submitted documents

c: Mr. Russell Anderson
P. O. Box 582
Spurger, TX 77660
(w/o enclosures)