ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2007

Ms. Christy Drake-Adams
Akers & Boulware-Wells
816 Congress, Suite 1725
Austin, Texas 78701

OR2007-02954

Dear Ms. Drake-Adams:

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# 273550.

The Rollingwood Police Department (the "department"), which you represent, received a request for information regarding a former officer of the department. You state the department will release some information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.111, 552.117, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit B was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2007-01354 (2007). The requestor in that instance had a special right of access to information tending to identify the alleged victim of sexual harassment. *See* Gov't Code § 552.023.[1] However, the requestor here does not have a special right of access to such information. Thus, the department must withhold the identifying information of the alleged sexual harassment victim in Exhibit B. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied); Open Records Decision Nos. 393 (1983); 339 (1982). However, with this one exception, the

[1]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."

department should continue to rely on our decision in Open Records Letter No. 2007-01354 (2007) with respect to the information in Exhibit B.

You assert that the information in Exhibit C is excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses section 1701.454 of the Occupations Code, which provides in relevant part that "[a] report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education] under this subchapter is confidential and is not subject to disclosure under [the Act]." Occ. Code §1701.454(a). The department must withhold the F-5 form (Report of Separation of License Holder) submitted as Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

You also claim that the information you have marked in Exhibit D is protected from disclosure by section 552.117 of the Government Code. You note that it is the department's understanding that the former employee at issue is not currently serving as a peace officer. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security numbers, and family member information of a current or former official or employee of a governmental body who requests 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 department may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee timely elected to keep the personal information confidential, the department must withhold the information you have marked in Exhibit D under section 552.117(a)(1). The department may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election to keep the information confidential. If section 552.117 does not apply to this information, then the department must withhold the social security number you have marked pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147 (stating the social security number of a living person is excepted from required public disclosure under the Act).

You next contend that the private e-mail address you have marked in Exhibit E is excepted from disclosure under section 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). Therefore, unless the individual has affirmatively consented to the release of the e-mail address in Exhibit E, we agree that the department must withhold the private e-mail address you have marked pursuant to section 552.137.

Lastly, you raise section 552.101 in conjunction with the common-law right to privacy for the information you have marked in Exhibit F. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and is of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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 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 also held 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.*

You contend that the public availability of the information marked in Exhibit F is governed by *Ellen*. Having considered your arguments and reviewed the information at issue in Exhibit F, we conclude that the information at issue is not part of an investigation of alleged sexual harassment for purposes of *Ellen*. Therefore, the department may not withhold any of the information in Exhibit F on that basis under section 552.101 of the Government Code. We further note that the information at issue pertains to employees of the department and their behavior in the workplace. As this office has often stated, the public generally has a legitimate interest in such information. We therefore conclude that the department may not withhold any of the information in Exhibit F under section 552.101 in conjunction with common-law privacy. *See also* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of public employees), 405 at 2 (1983) (manner in which public employee performed his or her job cannot be said to be of minimal public interest).

In summary: (1) because the requestor here does not have a special right of access to such information, the department must withhold the alleged sexual harassment victim's identifying information in Exhibit B pursuant to section 552.101 of the Government Code and common-law privacy; (2) with regard to the remaining information at issue in Exhibit B, the department should continue to rely on our decision in Open Records Letter No. 2007-01354; (3) the department must withhold Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (4) the

department must withhold the information marked in Exhibit D under section 552.117(a)(1) of the Government Code provided that the employee timely elected to keep the personal information confidential; (5) even if the employee did not timely elect, the department must withhold the marked social security number pursuant to section 552.147 of the Government Code; (6) the department must withhold the private e-mail address marked in Exhibit E pursuant to section 552.137 of the Government Code unless the individual has affirmatively consented to the release of the e-mail address; and (7) the department must release the information marked in Exhibit F. As this ruling is dispositive, we need not address your remaining arguments against disclosure.

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); *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 Office of the Attorney General 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,

Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 273550

Enc: Submitted documents

c: Mr. Dan Dworin
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(w/o enclosures)