



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2008

Ms. J. Middlebrooks  
Assistant City Attorney  
Criminal Law and Police Section  
City Attorney's Office  
1400 South Lamar  
Dallas, Texas 75215

OR2008-01577

Dear Ms. Middlebrooks:

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# 301096.

The Dallas Police Department (the "department") received two requests for records pertaining to any internal affairs complaints against a named officer and any records regarding a specified internal affairs case. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person

---

<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

and the public has no legitimate interest in it. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. *Id.* at 683.

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.*

When there is an adequate summary of a sexual harassment investigation, the summary must be released along with the statement of the accused, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We also note that supervisors are not considered witnesses under *Ellen*, and thus, supervisors' identities may generally not be withheld under section 552.101 and common-law privacy.

We note that the submitted information pertains to an internal administrative investigation of the officer related to allegations of a sexual nature and does not include an adequate summary of the investigation. In accordance with the holding in *Ellen*, the department must generally release the submitted information. However, the department must withhold the identifying information of the alleged victim you have marked under section 552.101 in conjunction with common-law privacy and *Ellen*. The department must also withhold the audio recording in its entirety as the victim's voice is identifying information. Furthermore, we agree that the remaining information you have marked as private is intimate and embarrassing and is not of legitimate concern to the public. Thus, the remaining picture you have marked must also be withheld under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code

excepts from public disclosure the home address and telephone number, social security number, 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 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld 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 of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request, under section 552.024, that the information be kept confidential.

Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). We note that section 552.117 also encompasses a personal cellular telephone and pager number, provided the service is not paid for by the governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use).

If the cellular telephone number we have marked is not paid for by a governmental body, and belongs to a peace officer, it must be withheld under section 552.117(a)(2). If the information we have marked belongs to an employee of the department who is not a licensed peace officer, and that employee timely requested confidentiality under section 552.024, the department must withhold the marked information pursuant to section 552.117(a)(1) of the Government Code. Otherwise, the marked cellular telephone number must be released.

You assert that some of the remaining submitted information is excepted under section 552.136 of the Government Code. Section 552.136(b) provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." You inform us that an employee's identification number is also used as an employee's credit union bank account number. Based upon this representation, we agree that the department must withhold the information you have marked under section 552.136 of the Government Code.

Finally, we note that some of the remaining submitted information is subject to section 552.137 of the Government Code which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the

e-mail address is of a type specifically excluded by subsection (c).<sup>2</sup> Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address that we have marked does not appear to be of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code.

In summary: (1) the department must withhold the identifying information of the alleged victim you have marked, including the submitted audio recording, under section 552.101 in conjunction with common-law privacy and *Ellen*; (2) the remaining picture you have marked must also be withheld under section 552.101 in conjunction with common-law privacy; (3) if the cellular telephone number we have marked was not paid for by the department and belongs to a licensed peace officer, it must be withheld under section 552.117(a)(2); (4) regardless, if this information belongs to an employee of the department who timely elected confidentiality under section 552.024, the department must withhold the marked information pursuant to section 552.117(a)(1) of the Government Code, otherwise it must be released; (5) the department must withhold the information you have marked under section 552.136 of the Government Code; and (6) the department must withhold the e-mail address we have marked under section 552.137 of the Government Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

---

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 challenge 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,



Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 301096

Enc. Submitted documents

c: Ms. Tanya Eiserer  
Dallas Morning News  
508 Young Street  
Dallas, Texas 75202  
(w/o enclosures)