



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-00532

Dear Mr. Bounds:

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# 332499.

The City of Corpus Christi (the "city") received a request for all formal written complaints filed against any city employee within six months of the date of the request.¹ You state that the city will release most of the requested information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of the requested information.²

¹We note that the requestor made her initial request for information on October 22, 2008. By letter dated October 27, 2008, the city asked the requestor to clarify or narrow her request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with requestor to clarify or narrow request will toll ten-business-day deadline to request decision under Gov't Code § 552.301(b)). In response to the city's letter, the requestor narrowed her request on October 29, 2008. On November 17, 2008, the city notified the requestor that it would require her to make a deposit for payment of anticipated costs in accordance with section 552.263 of the Government Code. In response to this notification, the requestor modified her request on November 17, 2008, agreeing to seek access to instead of copies of the requested information. *See* Gov't Code § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond). Thus, we agree that November 17, 2008, is the date the city received this specific request for information. Consequently, the city has complied with the section 552.301 deadlines for submission of information to this office. *See id.* §§ 552.263(f), 301(b), (c).

²We 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.

Government Code. We have considered the exception you claim and reviewed the submitted representative sample of the requested information.²

Initially, we note that the modified request for information asks only for formal written complaints against city employees. We have marked one page that is not responsive to the present request. The city need not release this information in response to this request, and this ruling will not address this 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." Gov't Code § 552.101. Section 552.101 encompasses section 143.089 of the Local Government Code. You state that the City of Corpus Christi is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain and an internal file that the police department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates alleged misconduct by a police officer or firefighter and takes disciplinary action against the police officer or firefighter, it is required by section 143.089(a)(2) of the Local Government Code to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's or firefighter's civil service file maintained pursuant to section 143.089(a). *See Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police officer's or firefighter's misconduct, and the department must forward them to the civil service commission for placement in the civil service file for the disciplined police officer or firefighter. *See id.* Chapter 143 of the Local Government Code prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. Such records are subject to release under the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to alleged misconduct by a police officer or firefighter may not be placed in that officer's civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's or firefighter's employment relationship with the police or fire department and that is maintained in the police or fire department's internal file

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pursuant to section 143.089(g) is confidential and must not be released.³ See *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); see also *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the portions of the submitted information that you have marked pursuant to section 143.089 are maintained in the Corpus Christi Police Department's internal personnel files pursuant to section 143.089(g). You also state that this information relates to investigations that did not result in any disciplinary action, as defined in chapter 143, against the officer. Based on your representations and our review, we conclude that these portions of the submitted information are confidential under section 143.089(g) of the Local Government Code and therefore must be withheld pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. 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 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.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. See Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints

³Section 143.089(g) requires a police or fire department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

made about a public employee's job performance. See Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

You have submitted two responsive complaints related to investigations of sexual harassment. One of these complaints contains an adequate summary prepared by the city prior to receipt of the present request. In accordance with the holding in *Ellen*, the city may withhold this harassment complaint pursuant to section 552.101 in conjunction with common-law privacy, but must release the adequate summary of the complaint. Before releasing the adequate summary, however, the city must redact the information we have marked, which identifies the alleged victim and witnesses. The second responsive document related to a sexual harassment investigation does not have an adequate summary. Therefore, the city must release this complaint, except for the portions thereof that identify the victim and which you have marked for redaction pursuant to section 552.101 in conjunction with common-law privacy.

Common-law privacy also protects other information considered intimate or embarrassing. 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. See 540 S.W.2d at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common-law privacy. See Open Records Decision Nos. 343 (1982) (references in emergency medical records to drug overdoses, acute alcohol intoxication, obstetrical or gynecological illnesses, convulsions or seizures, and emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 470 (1987) (illness from severe emotional and job-related stress).

You have marked several portions of the submitted information that you seek to withhold as medical information protected by common-law privacy. We agree that the marked medical information implicates the involved parties' privacy rights and must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We have also marked additional information that must be withheld on this basis.

In summary, the city must withhold the portions of the submitted information that we have marked pursuant to section 552.101 of the Government Code in conjunction with 143.089 of the Local Government Code and section 552.101 in conjunction with common-law privacy. The remainder of the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 332499

Enc. Submitted documents

cc: Requestor
(w/o enclosures)