



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Mr. Matthew C. G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2009-06561

Dear Mr. Boyle:

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# 343031.

The Colleyville Police Department (the "department"), which you represent, received two requests for all documentation related to a specific investigation. You state that you are providing a portion of the documents to the requestors. You claim that the submitted information is exempted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have redacted portions of the submitted information. You do not assert, nor does review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information

¹Although you also initially raised section 552.107 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. *See* Gov't Code §§ 552.301, 552.302.

it submits to this office in seeking an open records ruling. Redaction of such information may result in a determination that the information must be released. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. —Austin 1990, no writ).

You assert some of the submitted information 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." This section encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App. —Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the department's section 552.102(a) claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

Common-law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. 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. *Id.* 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 "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). 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. We note that supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

The submitted information does not contain an adequate summary of the investigation. Thus, the information at issue must generally be released, with the identities of the victims and witnesses redacted. However, we note because one of the requestors in this case is an alleged victim and the other requestor is a complainant, each requestor has a right of access to their own identifying information, and this information may not be withheld from the individual requestor. *See* Gov't Code § 552.023 (person has special right of access to information 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). However, a portion of the submitted information, which we have marked, identifies other alleged victims and witnesses of sexual harassment. The information we have marked in the investigation file must be withheld under common-law privacy. *See Ellen*, 840 S.W.2d at 525. The information concerning each requestor must be released to that particular requestor.²

We note that some of the remaining information is excepted from disclosure under section 552.117(a)(2) of the Government Code.³ Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. The department must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code.

Next, we note that section 552.130 of the Government Code is applicable to some of the remaining information. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Thus, you must withhold the Texas motor vehicle information that you have redacted under section 552.130.

²We note that the information being released contains confidential information to which the requestors have a right of access. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, if the department receives another request for this particular information from a different requestor, then the department must again seek a decision from this office.

³The Office of the Attorney General will raise mandatory exceptions, such as section 552.117 of the Government Code, on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department must generally withhold the information we have marked under common-law privacy, but any information that pertains to one of the requestors must be released to that particular requestor. The department must also withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the Texas motor vehicle record information you have redacted under section 552.130 of the Government Code. The remaining 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 343031

Enc. Submitted documents

c: Requestor
(w/o enclosures)