



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2009

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

OR2009-09532

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# 348898.

The City of Corpus Christi (the "city") received a request for a specified grievance investigation. You state you are releasing some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and is, therefore, generally not protected from disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow).*

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of common-law privacy to information relating to an investigation

of alleged 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. *See* 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.* 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 sexual harassment, the summary must be released along with the statement of the person accused of sexual harassment, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. If no adequate summary of the investigation exists, then detailed statements regarding the allegations must be released, but the identities of victims and witnesses must be redacted from the statements. In either event, the identity of the individual accused of sexual harassment is not protected from public disclosure. We note that supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

In this instance, the submitted information contains allegations of sexual harassment. Because there is no adequate summary of the investigation, the submitted information must generally be released with the victim's and witnesses' identifying information redacted pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. We note, however, that the requestor is the alleged victim in this instance. Section 552.023 of the Government Code gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Thus, here, the requestor has a special right of access to her own information, and the city may not withhold that information from her under section 552.101 in conjunction with common-law privacy.<sup>1</sup> *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, except where we have marked for release, we agree the city must withhold the information you have marked, and the information we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former 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 request that such 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

---

<sup>1</sup>We note, however, that if the city receives another request for this particular information from a different requestor, the city should again seek a decision from us before releasing this information.

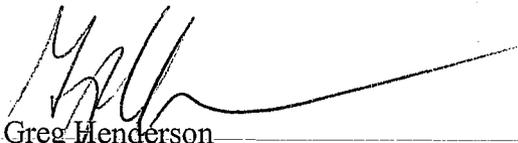
time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) on behalf of current officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee whose information you have marked timely elected to keep his information confidential pursuant to section 552.024, the city must withhold this information under section 552.117(a)(1). However, if the employee at issue did not timely elect under section 552.024, this information must be released.

In summary, except where we have marked for release, the city must withhold the information you have marked, and the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. If the employee whose information you have marked timely elected to keep his information confidential pursuant to section 552.024, the city must withhold this information under section 552.117(a)(1). 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](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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

Ref: ID#348898

Enc. Submitted documents

c: Requestor  
(w/o enclosures)