



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2009

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-3239

OR2009-11986

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# 353391.

The City of Corpus Christi (the "city") received two requests for information pertaining to complaints made by a named employee against the requestors. You state the city is releasing some of the requested information. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. *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 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*, along with the statement of the accused, 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). We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

The information you have marked relates to, among other things, an investigation into an alleged sexual harassment. Upon review, we determine the marked information contains an adequate summary of the alleged sexual harassment. The summary, which we have also marked, is not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary identifying the victim and witnesses must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, pursuant to section 552.101 and the ruling in *Ellen*, the marked summary is not confidential, but the remaining information and the identifying information of the victim and witnesses, which we have marked within the summary, must be withheld.

The remaining information contains personal information pertaining to the second requestor that may be confidential pursuant to section 552.117 of the Government Code. Section 552.117(a)(1) 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. Gov't Code §§ 552.024, .117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You do not inform us, and the submitted information does not reflect, whether the city employee at issue, the second requestor, elected to keep his information confidential pursuant to section 552.024 of the Government Code prior to the city receiving the request at issue. We have marked information that must be withheld if section 552.117 applies. However, we note that section 552.117 protects personal privacy. Therefore, the second requestor has a right of access to the information concerning himself, and that information may not be withheld from him under section 552.117. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, to the extent the second requestor made a timely election for confidentiality under section 552.024, the city

must withhold the marked information from the first requestor pursuant to section 552.117(a)(1). To the extent the second requestor did not make a timely election, the marked information may not be withheld from the first requestor on the basis of section 552.117.

In summary, with the exception of the summary of the investigation, the completed sexual harassment investigation must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. In releasing the summary, the city must withhold the identifying information of the sexual harassment victim and witnesses, which we have marked, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. To the extent the second requestor made a timely election for confidentiality under section 552.024, the city must withhold the marked information from the first requestor pursuant to 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,



Jennifer Luttrall

Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 353391

Enc. Submitted documents

c: Requestors  
(w/o enclosures)