ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Ms. Martha T. Williams
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-12558

Dear Ms. Williams:

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# 354857.

The City of Spring Valley Village (the "city"), which you represent, received a request for public policy on inventory searches for the city's police department and the disciplinary records of three named police officers.[1] You state the city has released most of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.[2] We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy

[1]The submitted information indicates that the city sought and received a clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

[2]Although you failed to raise section 552.101 of the Government Code within the ten-business-day time period prescribed by section 552.301(b), we will address your arguments under this section, as it is a mandatory exception to disclosure that a governmental body may not waive. *See* Gov't Code §§ 552.007, .301, .302, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). This office has found that the public has a legitimate interest in the qualifications and work conduct of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). You seek to withhold a memorandum pertaining to a sexual harassment investigation because you contend the document does not contain "information relevant to the officer's job." However, upon review we disagree and find that the submitted memorandum pertains directly to public employees' work conduct and documents an investigation into such work conduct. Accordingly, we find there is a legitimate public interest in this information.

However, 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*, 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). 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. We note that since common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance, the identity of the individual accused of sexual harassment is not protected from public disclosure. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

Upon review of the memorandum at issue, we find that it does not consist of an adequate summary of the sexual harassment investigation because it does not detail the allegations made or the statements of the parties involved. Because the submitted information does not consist of an adequate summary of the investigation, it must generally be released. However, the submitted memorandum contains the identity of the alleged sexual harassment victim. Accordingly, we conclude that the city must withhold the information we have marked

pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy and the holding in *Ellen*. The remaining information is not intimate or embarrassing and is of legitimate public interest. Thus, none of the remaining information at issue may be withheld pursuant to section 552.101 in conjunction with common-law privacy under *Ellen*. As you raise no additional arguments against its disclosure, the remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,

Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 354857

Enc. Submitted documents

c: Requestor
(w/o enclosures)