ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2012

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-02363

Dear Ms. Armstrong:

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# 445693 (DPD# 2011-10323).

The Dallas Police Department (the "department") received a request for any investigations involving a named employee and the employee's personnel file. Because the department did not submit the requested personnel file, we presume it has been released. If not, then the department must release it at this time. *See* Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000). The department claims the submitted investigative records are excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered your claimed exceptions to disclosure and reviewed the submitted sample information.[1]

Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. You acknowledge, and we agree, the department failed to request a ruling from this office within ten business days or submit the required items within fifteen business days as prescribed by section 552.301. *See id.* § 552.301(b), (e). Pursuant to section 552.302, a governmental

[1]We assume the sample records submitted to this office are 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 those records contain substantially different types of information than that submitted to this office.

body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.117, and 552.136 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to 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 the common-law right of privacy, which protects information if it (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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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 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 along with the statement of the accused 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. Supervisors and other management personnel are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

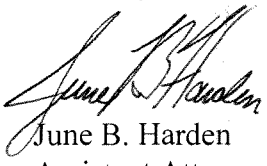
The submitted information consists of two files pertaining to investigations of alleged sexual harassment. Each file contains an adequate summary of the investigation. Thus, the summaries and the statements of the accused, which we have marked, are not confidential under common-law privacy. However, the remaining information must be withheld under

section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.[2] As for the summaries and the statements of the accused, the department must withhold the identifying information of the alleged victim and witnesses, which we have marked, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. The remaining information in the summaries and statements of the accused 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, toll free, at (888) 672-6787.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/bs

Ref: ID# 445693

c: Requestor
(w/o enclosures)

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[2]As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of this information.