



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2013

Ms. Crystal Koonce
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2013-06140

Dear Ms. Koonce:

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# 483985.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified investigation that resulted in the termination of the requestor's client, as well as the personnel file of the requestor's client. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 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." This section encompasses the doctrine of common-law privacy, which 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are

excepted from required public disclosure under common-law privacy. *E.g.* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

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*, 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, 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. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

Exhibit B consists of an investigation into alleged sexual harassment. This information contains an adequate summary of the investigation and written statements and audio recordings of the requestor's client, who was accused of the sexual harassment. Thus, the summary and the statements and recordings of the requestor's client are not confidential under common-law privacy and *Ellen*. However, the remaining information in the investigation file, which we have marked, is confidential under common-law privacy.¹ The summary and the statements and recordings of the requestor's client contain identifying information of the victim of and a witness to the alleged sexual harassment. We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context. Thus, the supervisors' identifying information within the summary and the statements and recordings of the requestor's client is not confidential within these documents. Nevertheless, we agree the sheriff's office must withhold the remaining identifying information of the victim and witness, which we have marked within the summary and statements. The sheriff's office must also withhold this same information located within the recordings of the accused on the same ground. We also agree the sheriff's office must withhold certain medical information within the remaining documents, which we have marked, under section 552.101 of the Government Code in conjunction with

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

common-law privacy. However, we find the remaining information you seek to withhold under common-law privacy is not highly intimate or embarrassing. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). You assert some of the information in Exhibit C is confidential under section 58.007 of the Family Code. However, this information is contained within commendations in the requested personnel file. These commendations do not consist of juvenile law enforcement records for purposes of section 58.007. Therefore, this information is not confidential pursuant to section 58.007 and the sheriff's office may not withhold it from release under section 552.101 on that ground.

Nevertheless, this office has also found common-law privacy protects the identifying information of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Exhibit C contains the identifying information of a juvenile offender. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or

section 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). We agree the sheriff's office must withhold the information you have marked under section 552.117(a)(2).

Some of the remaining information is excepted from disclosure under section 552.130 of the Government Code.³ Section 552.130(a)(1) provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a)(1). The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

The sheriff's office asserts some of the remaining information is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. We note some of the information you have marked under section 552.137 does not consist of an e-mail address of a member of the public. We also note the requestor has a right of access under section 552.137(b) of the Government Code to one of the e-mail addresses you seek to withhold under section 552.137. *See id.* § 552.137(b). Therefore, the sheriff's office may not withhold these e-mail addresses under section 552.137. However, the remaining e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137.

To conclude, the sheriff's office must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as this same information located within the recordings of the accused on the same ground; (2) the information you have marked under section 552.117(a)(2) of the Government Code; and (3) the information we have marked under sections 552.130

²"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).*

and 552.137 of the Government Code. The sheriff's office must release the remaining information.⁴

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 483985

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because the requestor has a special right of access to some of the information being released, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.