



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 26, 2013

Ms. Danielle R. Folsom  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2013-16788

Dear Ms. Folsom:

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# 500436 (City GC No. 20674).

The City of Houston (the "city") received a request for incident report forms and emergency action protocol documents for all city pools from specified years. You state you are releasing some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.136 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part, the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note Exhibit 3 was used or developed in an investigation of alleged child abuse. *See id.* § 261.001(1) (definition of child abuse includes aggravated sexual assault under Penal Code section 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code section 22.021 as person under 17 years of age). Accordingly, we find this information is subject to chapter 261 of the Family Code. You have not indicated the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude Exhibit 3 is confidential under section 261.201(a) of the Family Code, and the city must withhold it in its entirety under section 552.101 of the Government Code.<sup>1</sup> *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

Section 552.101 of the Government Code also encompasses section 402.083(a) of the Labor Code, which states “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except as provided by this subtitle[.]” Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, information in the possession of the city that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you assert Exhibit 4 is confidential pursuant to section 402.083, you provide no representation, and the documents do not reflect, that the city received these records from the division. Therefore, you have failed to demonstrate the applicability of section 402.083 to the information at issue. Thus, the city may not withhold Exhibit 4 under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which 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

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<sup>1</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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 the files of a sexual harassment investigation. 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. 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 under *Ellen*, along with the statement of the accused. However, 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, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of victims and witnesses must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

Exhibit 2 relates to a sexual harassment investigation. Upon review, we find this information does not contain an adequate summary of the investigation of sexual harassment. Because there is no adequate summary of the investigation, any information pertaining to the sexual harassment investigation must generally be released. However, the information at issue contains the identifying information of the sexual harassment victim. Accordingly, the city must withhold the information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*.<sup>2</sup> *See* 840 S.W.2d at 525. However, we find the remaining information at issue does not identify a victim or witness in the investigation. Thus, none of the remaining information in Exhibit 2 may be withheld under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.<sup>3</sup> Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, if the individual whose personal information we have marked in Exhibit 4 timely requested confidentiality under section 552.024, the city must withhold this information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone number if the cellular service is not paid for by a governmental body. If the individual at issue did not make a timely election under section 552.024, the city may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government provides in part that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). You inform us an employee's identification number is also used as part of an employee's credit union checking account number. However, you also inform us the city has no way of distinguishing which employees have credit union checking account numbers. Accordingly, if the employee whose employee identification number you have marked in Exhibit 4 does not have a credit union checking account, then the city may not withhold this information under section 552.136. If the employee at issue has a credit union checking account, then the city must withhold the employee identification number you have marked in Exhibit 4.

In summary, the city must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The city must withhold the information we have marked in Exhibit 2 under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. If the individual whose

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480(1987), 470 (1987).

personal information we have marked in Exhibit 4 timely requested confidentiality under section 552.024, the city must withhold this information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone number if the cellular service is not paid for by a governmental body. The city must withhold the employee identification number you have marked in Exhibit 4 if the employee at issue has a credit union checking account. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 500436

Enc. Submitted documents

c: Requestor  
(w/o enclosures)