ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2014

Ms. Janet L. Kellogg
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2014-02429

Dear Ms. Kellogg:

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# 513432 (Corpus Christi File No. 895).

The City of Corpus Christi (the "city") received a request for all statements related to a specified city investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.117 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

You note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-19498 (2013). In that ruling, this office determined the city must: (1) withhold from the adequate summary and statements of the accused the marked identifying information of the victims and witnesses under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied); (2) withhold the marked information under

[1]Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). The proper exception to raise when asserting the attorney work product privilege for information not subject to section 552.022 of the Government Code is section 552.111 of the Government Code.

section 552.117(a)(1) of the Government Code, if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code; and (3) release the remaining information in the summary of the investigation and the statements of the accused. This office determined the city must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*. In this instance, we note the submitted documents contain the requestor's information that is subject to section 552.117(a)(1). Section 552.117 protects privacy interests. Thus, the requestor has a right of access to his own information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, we find the circumstances have changed with respect to the requestor's information, and the city may not rely on Open Records Letter No. 2013-19498 as a previous determination in regard to that information. *See* Open Records Decision No. 673 at 7-8 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Therefore, the city may not withhold the requestor's information under section 552.117(a)(1) in accordance with Open Records Letter No. 2013-19498, but instead must release this information from the adequate summary and statements of the accused to this requestor pursuant to section 552.023 of the Government Code. However, as to the remaining information that was the subject of the prior ruling, we have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2013-19498 as a previous determination and withhold or release this remaining information in accordance with that ruling. ORD 673 (2001).

We now address your arguments for the submitted information that is not encompassed by the previous ruling. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 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 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 common-law privacy to information relating to an investigation

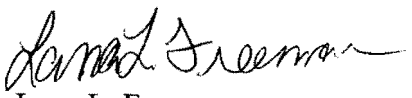
of alleged sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court 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.* 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 victim 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.

In this instance, the submitted information relates to a sexual harassment investigation and contains an adequate summary, as well as statements of the accused. We note the adequate summary and statements of the accused were previously released in Open Records Letter No. 2013-19498. Accordingly, the city must withhold the remaining submitted information that was not at issue in the prior ruling under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

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, 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,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 513432

Enc. Submitted documents

c: Requestor
(w/o enclosures)