



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2014

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

OR2014-06396

Dear Ms. McClellan:

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# 519920 (DPD ORR# 2014-00934).

The Dallas Police Department received a request for grievance and internal affairs records involving two named individuals. You claim the requested information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-03922 (2014). In that ruling, we concluded the department must withhold the identifying information of the alleged sexual harassment victim under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*, withhold certain information under section 552.117(a)(2) of the Government Code, and release the remaining information. We have no indication the law, facts, and circumstances on which

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<sup>1</sup>Based on your markings, we understand you to claim some of the submitted information is excepted under section 552.136 of the Government Code.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is 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 that those records contain substantially different types of information than that submitted to this office.

the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2014-03922 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (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). We will now address your arguments against disclosure of the information not subject to Open Records Letter No. 2014-03922.

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 exception encompasses 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances where it is demonstrated that the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. You contend the department must withhold all the submitted information to protect one of the named individual’s privacy because the individual’s identity is known to the requestor. Having considered your arguments and reviewed the information at issue, we find this is not an instance in which all the information at issue must be withheld to protect an individual’s privacy.

We note the information at issue consists of records related to an investigation of alleged sexual harassment. 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. We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context. Further, 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).

In this instance, the information at issue is related to a sexual harassment investigation and does not include a summary of the investigation. Therefore, the department must generally release the information pertaining to the investigation. However, this information contains the identity of the alleged sexual harassment victim and witnesses to the harassment. Therefore, the department must withhold the identities of the alleged victim and witnesses, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. See 840 S.W.2d at 525. However, we find the department has not demonstrated how any portion of the remaining information is highly intimate or embarrassing and not of legitimate public. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy and *Ellen*.

Section 552.117(a)(2) of the Government Code is applicable to some of the remaining information.<sup>3</sup> 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.<sup>4</sup> Gov't Code § 552.117(a)(2). We note section 552.117(a)(2) encompasses a peace officer's personal cellular telephone and pager numbers if the officer personally pays for the cellular or pager service. See Open Records Decision No. 670 at 6 (2001); see also Open Records Decision No. 506 at 5-6 (1998) (Gov't Code § 552.117 not applicable to cellular mobile telephone numbers paid for by governmental body and intended for official use). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2); however, the department may only withhold the marked personal cellular number under section 552.117(a)(2) if the officer at issue paid for the cellular telephone service.

Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], 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 *id.* § 552.136(a) (defining "access device"). The remaining information

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

<sup>4</sup>"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

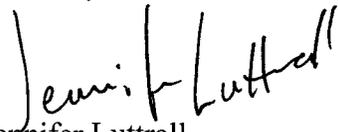
contains employee identification numbers. We understand an employee identification number is the same number used for the City of Dallas credit union accounts plus one additional number. Thus, the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2014-03922 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The department must withhold the identifying information of the alleged sexual harassment victim and witnesses under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked personal cellular number under section 552.117(a)(2) if the officer at issue paid for the cellular telephone service. The department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. 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,

  
Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 519920

Enc. Submitted documents

c: Requestor  
(w/o enclosures)