



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2014

Mr. John A. Kazen
Counsel for the Laredo Independent School District
Kazen, Meurer & Perez, L.L.P.
P.O. Box 6837
Laredo, Texas 78042-6237

OR2014-12615

Dear Mr. Kazen:

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# 529970.

The Laredo Independent School District (the "district"), which you represent, received a request for all information relating to any complaints or allegations against the requestor's client and the requestor's client's campus and personnel files. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code.¹ Additionally, you state release of the submitted information may implicate the privacy interests of a third party. Accordingly, you state, and provide documentation showing, you notified the third party of the request for information and of her right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested

¹Although you raise section 552.102 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the third party's attorney. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted the requestor's client's campus and personnel files. We assume, to the extent any information responsive to the remainder of the request existed on the date the district received the request, the district has released it. If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

The district and the third party's attorney raise section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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 demonstrated. *See id.* at 681-82.

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 the *Ellen* decision 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 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.

The submitted information relates to an investigation into an alleged sexual harassment. Upon review, we determine the submitted information does not contain an adequate summary of the alleged sexual harassment. Because there is no adequate summary of the investigation, the district must generally release any information pertaining to the sexual harassment investigation. However, the information at issue contains the identity of a victim of the alleged sexual harassment. Accordingly, the district must withhold such information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*.² See *Ellen*, 840 S.W.2d at 525. However, we find neither the district nor the third party's attorney has demonstrated how any portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

The third party's attorney asserts the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we note the purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third party. See Open Records Decision Nos. 549 at 6 (1990), 522 (1989) (discretionary exceptions in general). In this instance, the district also raises section 552.101 in conjunction with the common-law informer's privilege; thus, we address the district's claim. The district states the remaining information reveals the identity of a complainant who reported violations of the civil and criminal statutes. Upon review, we find the remaining information does not identify an informant. Thus, the district may not withhold any of the remaining

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

information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We understand the third party's attorney claims the remaining information is excepted from disclosure under section 552.108 of the Government Code, which provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a)(1). We note section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests, as distinguished from exceptions that are intended to protect the interests of third parties, and may be waived by the governmental body. *See* Open Records Decision Nos. 522 at 4 (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Because the district does not seek to withhold any information under section 552.108, none of the remaining information may be withheld on that basis.

The district claims the remaining information is excepted from disclosure by section 552.135 of the Government Code, which provides, in part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a), (b). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. Upon review, we find the district has not demonstrated how the remaining information identifies an informer who reported a possible violation of civil, criminal, or regulatory law. We therefore conclude the district may not withhold any of the remaining information under section 552.135 of the Government Code.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone

numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1).³ See *id.* §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. 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 or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the district may not withhold the information under section 552.117(a)(1).

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code. The district must release the remaining information.

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/>

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 529970

Enc. Submitted documents

c: Requestor
(w/o enclosures)