



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 14, 2014

Mr. Ronald D. Stutes
Potter Minton, P.C.
Counsel for the City of Palestine
110 North College
500 Plaza Tower
Tyler, Texas 75702

OR2014-14334

Dear Mr. Stutes:

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# 533082.

The City of Palestine (the "city"), which you represent, received a request for all documents related to a comment made by a specified individual at a specified event. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 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. We note the submitted information relates to an complaint 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 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.

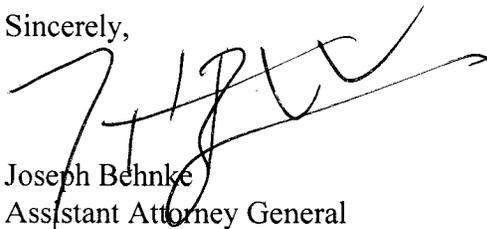
Upon review, we find this information does not contain an adequate summary of an investigation of sexual harassment. Because there is no adequate summary, any information pertaining to the sexual harassment complaint must generally be released. However, the information at issue contains the identifying information of the sexual harassment victim. Accordingly, we find the city must withhold the identifying information of the employee who filed the sexual harassment complaint, 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 none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy, and it must be released to the requestor.

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,

A handwritten signature in black ink, appearing to read 'JB', is written over the typed name 'Joseph Behnke'.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 533082

Enc. Submitted documents

c: Requestor
(w/o enclosures)