



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2014

Mr. Michael Bostic
Assistant City Attorney
Office of the City Attorney
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2014-17634

Dear Mr. Bostic:

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# 538222 (ORR No.273922).

The City of Dallas (the "city") received two requests from the same requestor for all records related to a specified investigation. You state you will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public.

¹We 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.

Indus. Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976). 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 *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. *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.

Upon review, we find the submitted information consists of an investigation of alleged sexual harassment. This investigation contains an adequate summary of the investigation, as well as statements of the accused. The summary and statements are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statements identifying victims and witnesses must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. See *Ellen*, 840 S.W.2d at 525. Thus, pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*, the city must withhold the identifying information of the victims and witnesses, which we have marked, within the adequate summary and statements, and must release the remainder of the adequate summary and statements. Because there is an adequate summary, the city must also withhold the remainder of the investigation at issue, which we have marked, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.²

We note common-law privacy also protects other types of information. In addition to the information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, this office has concluded some kinds of medical information are generally

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

highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we conclude the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. If the individuals at issue are currently licensed peace officers as defined by article 2.12, then the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Conversely, if the individuals at issue are not currently licensed police officers as defined by article 2.12, the information we have marked may not be withheld under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not currently licensed peace officers, then their personal 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 number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold the information at issue under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals at issue made timely elections under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue did not make timely elections under section 552.024, their information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.136(b) of the Government Code states "Notwithstanding 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"). You state an

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

In summary, with the exception of the adequate summary and statements of the accused, which we have marked for release, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. Within the adequate summary and statements, the city must withhold the information we have marked identifying the victims and witnesses under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. The city must also withhold the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information at issue are currently licensed peace officers as defined by article 2.12, then the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individuals whose information is at issue are not currently licensed peace officers and made timely elections under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. The city must release the remaining information in the adequate summary and statements.

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Mr. Michael Bostic - Page 5

Ref: ID# 538222

Enc. Submitted documents

c: Requestor
(w/o enclosures)