



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 7, 2015

Mr. Guillermo Trevino  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2015-13641

Dear Mr. Trevino:

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# 570492 (Public Information Request No. W041939).

The City of Fort Worth (the "city") received a request for all disciplinary records pertaining to a named individual. You state you have released some information. You claim portions of the submitted information are 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. Additionally, in *Morales v. Ellen*, the court determined the identities of witnesses to and victims of sexual harassment in the workplace are highly intimate and embarrassing and not of legitimate public interest. *See* 840 S.W.3d 519 (Tex. App.—El Paso 1992, writ denied). Upon review,

we find the identity of the alleged victim of sexual harassment within the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, a portion of the information you marked does not consist of the identity of the alleged victim or witnesses. Further, you have failed to demonstrate this information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.<sup>1</sup> See Gov't Code § 552.117(a)(1). 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 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 individuals whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1) of the Government Code.

In summary, with the exception of the information we marked for release, the city must withhold the information you marked under section 552.101 in conjunction with common-law privacy. To the extent the individuals whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) 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.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive, slightly slanted style.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/eb

Ref: ID# 570492

Enc. Submitted documents

c: Requestor  
(w/o enclosures)