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ATTORNEY GENERAL OF TEXAS

September 10, 2015

Mr. Renatto Garcia
Ms. Aimee Alcorn
Assistant City Attorneys
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-18917

Dear Mr. Garcia & Ms. Alcorn:

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# 578869 (city# 730 and city# 829).

The City of Corpus Christi (the "city") received two separate requests for information related to a specified human resources investigation. You state the city will release some information. You claim some of 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 if it (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. *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 established. *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 in an employment context. 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 that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "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, but 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). 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 that because 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). We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

In this instance, the submitted information pertains to a sexual harassment investigation and thus, is subject to the ruling in *Ellen*. Upon review, we find the submitted information includes an adequate summary of the investigation, as well as a statement by the person accused of sexual harassment. The adequate summary and statement of the accused are not confidential under section 552.101 in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, with the exception of the adequate summary and the statement of the accused, the city must withhold the remaining information under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.¹ We note, however, information within the adequate summary and statement of the accused that identifies the victims and witnesses is confidential under common-law privacy. *See id.* Therefore, the city must generally withhold the information that identifies the victims and witnesses, which you have marked, within the adequate summary and statement of the accused under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. In this instance, one of the requestors is an alleged sexual harassment victim and witness. Section 552.023 of the Government Code states a person has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (governmental body may not deny access to

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

whom information relates or person's authorized representative on grounds that information is considered confidential by privacy principles). Thus, this requestor has a special right of access to his own information, and the city may not withhold this requestor's respective information from him under section 552.101 on the basis of common-law privacy.

In summary, with the exception of the adequate summary of the investigation and the statement of the accused, which we have marked, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. In releasing the adequate summary and the statement of the accused, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. However, pursuant to section 552.023 of the Government Code, the requestor who is a victim and witness has a right of access to his own private 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/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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 578869

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)