



August 30, 1999

Ms. Margaret Turner Carrigan
Assistant City Attorney II
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR99-2437

Dear Ms. Carrigan:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127101.

The City of Plano (the "city") received a request for a copy of the requestor's personnel file as well as information pertaining to several internal investigations. Although you state that some of the requested information will be released, you claim that certain investigatory documents are excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample information.¹

Initially, you argue that much of the submitted information is protected by common-law privacy. Section 552.101 incorporates the common-law right of privacy which excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release

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.

would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common-law privacy 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 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.*

When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, we believe that when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. In this instance, we cannot determine, nor have you indicated, that a summary of the investigation has been released to the requestor. Therefore, we conclude that the city must release the de-identified statements of the alleged victim and witnesses to the requestor.²

You also argue that some of the requested information is excepted from disclosure by section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from an attorney to a client do not reveal the client's communications to the attorney, section 552.107 protects them only

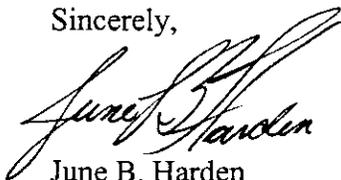
²You state that the sexual harassment complaint contains a statement that the "information would be given confidential treatment." Generally, governmental bodies are prohibited from entering into contracts to keep information confidential. Open Records Decision Nos. 514 (1988), 484 (1987), 479 (1987). Unless the city is explicitly authorized to make an enforceable promise to keep information confidential, it may not make such a promise. Since you have not provided evidence that the city has the requisite statutory authority, the city may not withhold any of the requested records based upon this statement.

to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from an attorney to a client, or between attorneys representing the client, are not protected. *Id.* Moreover, section 552.107(1) does not protect from disclosure factual information compiled by a governmental attorney acting in the capacity of an investigator rather than a legal advisor. Open Records Decision No. 462 (1987). After careful review, we have marked the document that may be withheld under section 552.107.

Finally, we note that the documents we have marked for release reveal personal family member information of a public employee. It is possible that this information may be confidential under section 552.117 of the Government Code, and therefore, depending on the specific circumstances, may not be released. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 127101

Encl. Marked documents

cc: Mr. Brian Buechele
1417 E. Park Boulevard
Plano, Texas 75074
(w/o enclosures)