



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2003

Ms. Meredith Ladd
Brown & Hoffmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2003-7775

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190167.

The City of McKinney (the "city"), which you represent, received a written request for all records pertaining to the resignation of a named former city employee, as well as "all records involving personnel rule violations of [the city's] Public Utilities, Water/Wastewater Department employees . . . for the period of 1/1/02 to 8/1/03." You have submitted to this office as responsive to the request records from an investigation of alleged sexual harassment that occurred in 2002.¹ You contend that the submitted information is excepted from required disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by the common-law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is protected from disclosure under the common-law right to privacy if (1) it contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. See *id.* at 685

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied the common-law right to privacy addressed in *Industrial Foundation* to an investigation of allegations of sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the

¹We assume the city has released the other requested information, to the extent it exists. If it has not, it must do so at this time. See Gov't Code §§ 552.301, .302.

misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does 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.* Therefore, when there is an adequate summary of an investigation, the summary and any statements of the person under investigation must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, 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 accordance with *Ellen*, this office typically has required the release of a document analogous to the conclusions of the board of inquiry in *Ellen*, but has held that a governmental body must withhold both the identities of victims and witnesses of alleged sexual harassment and any information that would tend to identify such a victim or witness. In this instance, the submitted information consists of three letters of reprimand. Upon careful review of the submitted information, we conclude that the submitted documents constitute an adequate summary of the city's investigation of the alleged sexual harassment. We therefore conclude that the city must release the submitted documents, but only after redacting the identifying information we have marked as coming within the common-law right of privacy.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling,

the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/seg

Ref: ID# 190167

Enc: Submitted documents

c: Ms. Alisha Wickens
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McKinney, Texas 75070
(w/o enclosures)