



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2004

Ms. Elizabeth Lutton  
Senior Attorney  
Office of the City Attorney  
City of Arlington  
P. O. Box 1065  
Arlington, Texas 76004-1065

OR2004-9607

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212746.

The City of Arlington (the "city") received a request for information pertaining to a specified internal affairs investigation. The requestor also asks the city several questions in her request.<sup>1</sup> You state that the city will release most of the requested information to the requestor. You claim that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>2</sup>

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<sup>1</sup> We note that the Public Information Act (the "Act") does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). However, a governmental body must make a good-faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision No. 561 at 8 (1990). We, therefore, presume that the city has made the required good-faith effort to relate the requestor's questions to information that is within the city's custody or control.

<sup>2</sup> We 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.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>3</sup> Information is protected from disclosure by the common-law right to privacy if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and of no legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (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 investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment are exactly the types of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *See Ellen*, 840 S.W.2d at 525. However, the court ordered the release of the affidavit of the person under investigation. *See id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance “the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements.” *Id.* Thus, 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 this instance, we find that none of the submitted documents constitutes an adequate summary of the investigation. We, therefore, conclude that the city must withhold the identifying information of victims of and witnesses to the alleged sexual harassment that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.117 of the Government Code. We note that section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(a)(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024

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<sup>3</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code* § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

was not made until after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that to the extent that the employees with whom the information that we have marked under section 552.117(a)(1) is associated elected confidentiality for this information prior to the date that the city received this request, the city must withhold that information pursuant to section 552.117(a)(1) of the Government Code.

Nevertheless, we note that a social security number contained within the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law.<sup>4</sup> The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The city has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that this social security number is confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing this social security number, the city should ensure that it was not obtained and is not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the city must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy on the basis of *Ellen*. To the extent that the employees with whom the information that we have marked under section 552.117(a)(1) is associated elected confidentiality for this information prior to the date that the city received this request, the city must withhold that information pursuant to section 552.117(a)(1) of the Government Code. Nevertheless, a social security number contained within the submitted information may be confidential under federal law. The city must release the remaining submitted information to the requestor to the extent that it has not already done so.

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

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<sup>4</sup> Section 552.101 of the Government Code also encompasses information that is protected from disclosure by other statutes. *See* Gov't Code § 552.101.

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).

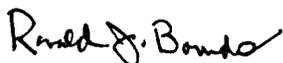
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 212746

Enc. Marked documents

c: Ms. Susan Schrock  
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c/o Elizabeth Lutton  
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(w/o enclosures)