



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2006

Ms. Jennifer McClure
Assistant District Attorney
Dallas County District Attorney's Office
Civil Division - Administration Building
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2006-04211

Dear Ms. McClure:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 247254.

The Dallas County Commissioners Court (the "county") received a request for the entire human resources file of a named former employee, including any complaints filed by the employee against the county and any investigations by the county concerning the employee. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right of privacy. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

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 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.*

The submitted information contains an adequate summary of the investigation into alleged sexual harassment. Therefore, you must withhold the documents in the investigation file except for the summary which must be disclosed pursuant to *Ellen*, 840 S.W.2d at 525. However, the identities of the victims and witnesses to the alleged sexual harassment are protected by the common law privacy doctrine and must be withheld. *Id.* Contrarily, the public interest in the statement and the identity of the alleged harasser outweighs any privacy interest the alleged harasser may have in that information; therefore, the county may not withhold this information under section 552.101. The public has no legitimate interest in the details of the victims' and witnesses' personal statements, and they may not be disclosed. *Id.*

The county also claims that section 552.117 of the Government Code may be applicable to some of the remaining submitted information. 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 request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the named employee timely elected to keep his personal information confidential, the county must withhold the employee's home address and telephone number, social security number, and any information that reveals whether this employee has family members. The county may not withhold this information under section 552.117 for the employee if he did not make a timely election to keep the information confidential.

Even if section 552.117(a)(1) does not apply, some of the remaining information may be excepted from disclosure under section 552.117(a)(2) of the Government Code if the named employee is a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117(a)(2) excepts the current and former home address and telephone number,

social security number, and the family member information of a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code or complies with section 552.1175 of the Government Code. This section applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. The county must withhold those portions of the records that reveal the officer's home address, home telephone number, and social security number. The county must also withhold the officer's former home addresses and telephone information from disclosure. See Open Records Decision No. 622 (1994). We have marked the information that may fall within section 552.117(a)(1) or (a)(2).

Regardless of the applicability of section 552.117 to any of the information at issue, we note that the submitted information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.¹ Therefore, the county must withhold the social security number contained in the submitted information under section 552.147.²

We also note that the submitted information includes Texas-issued motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We have marked the information that the county must withhold pursuant to section 552.130.

The submitted information also includes an e-mail address. Under section 552.137 of the Government Code, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. See *id.* § 552.137(b). You do not inform us that the individual to whom the e-mail address belongs has affirmatively consented to the release of his e-mail address contained in the submitted materials. The county must, therefore, withhold the marked e-mail address under section 552.137.

In summary, under section 552.101 of the Government Code and the rationale set forth in *Ellen*, the county must release the summary of the sexual harassment investigation and the alleged harasser's statement, redacting the identifying information of the alleged victim and any witnesses. The remainder of the sexual harassment investigation file must be withheld.

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

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

If the named employee completed a timely election form under section 552.024 of the Government Code, the county must withhold the home address, home phone number, social security number, and family member information that we have marked under section 552.117(a)(1) of the Government Code. Even if a timely election was not completed under section 552.024, the same information must be withheld under section 552.117(a)(2) if the named employee is a peace officer as defined under article 2.12 of the Code of Criminal Procedure. The submitted social security number must be withheld under section 552.147 of the Government Code. The submitted Texas driver's license information must be withheld under section 552.130 of the Government Code. The submitted email address must be withheld under section 552.137 of the Government Code. The remaining submitted information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

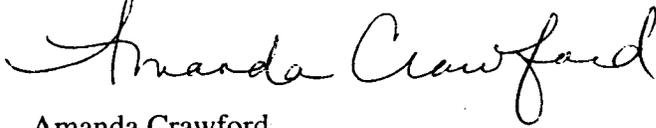
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in black ink and is positioned above the typed name and title.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/krl

Ref: ID# 247254

Enc. Submitted documents

c: Mr. Jack Fink
jackf@ktvt.com
(w/o enclosures)