



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2009

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606

OR2009-14895

Dear Mr. Ray:

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# 358963.

The City of Longview (the "city") received a request for the internal affairs report brought against a specified person. You claim portions of the investigative records are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.1175, 552.130, and 552.147 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

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. *Id.*

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*, 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. 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).

The submitted documents relate to two investigations of sexual harassment. Portions of the submitted documents constitute adequate summaries of the investigations and statements by the person who was accused of sexual harassment. These summaries and statements of the accused, which we have marked for release, are thus not confidential; however, information within the summaries and statements of the accused identifying the victims and witnesses is confidential under common-law privacy and must be withheld pursuant to section 552.101. *See Ellen*, 840 S.W.2d at 525. You have marked the identifying information of the victims within the summaries and statements of the accused under section 552.101. You must withhold this information, and the additional identifying information of the witnesses we have marked, under section 552.101 in conjunction with common-law privacy. The remainder of the investigative records must also be withheld under section 552.101 of the Government Code in conjunction with common-law privacy because it relates to the sexual harassment investigations.<sup>1</sup> *See id.*

Section 552.117 is also applicable to portions of the summaries and statements of the accused. Section 552.117(a)(1) excepts from disclosure the current and former 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone numbers, and social security number of a peace

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<sup>1</sup>Because of our redactions under section 552.101, most of your markings under section 552.117 are no longer applicable. Furthermore, we need not address your remaining arguments against disclosure of this information.

officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. You have marked family member information in the summaries and statements of the accused. Because of the redactions under section 552.101, much of the information you marked under section 552.117 no longer reveals the family member information of any specific peace officer or employee. Accordingly, we have marked most of this information for release. The city must withhold, however, the remaining family information you have marked, and the additional information we have marked, in the summaries and statements of the accused under section 552.117(a)(2) of the Government Code.

In summary, with the exception of the marked summaries and statements of the accused, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. From the summaries and statements of the accused, the city must withhold the marked information identifying the alleged sexual harassment victims and witnesses under section 552.101 in conjunction with common-law privacy. The city must also withhold the marked family member information in the summaries and statements of the accused pursuant to section 552.117 of the Government Code. The remaining information in the summaries and statements of the accused must be released.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 358963

Enc. Submitted documents

c: Requestor  
(w/o enclosures)