



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 2, 2009

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2009-15550

Dear Ms. McClellan:

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# 359997.

The Dallas Police Department (the "department") received a request for the personnel file of a named department police officer. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

The requestor states that she excludes any social security numbers, criminal history record reports (NCIC/TCIC), vehicle information, home address and home phone number information, family member information, polygraph test results and medical information from her request. Accordingly, this information, which we have marked, is not responsive

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.

to the instant request for information. The department need not release non-responsive information in response to this request, and this ruling will not address it.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (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 in an employment context. The information at issue concerns allegations of a department employee harassing a member of the public, not a fellow employee or employees. Because this information does not concern sexual harassment in the employment arena, we find that *Ellen* is not applicable. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*.

You assert that the information you have marked is confidential under section 552.136(b) of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. You inform us that an employee's identification number, with the addition of one digit, is also used as an employee's credit union bank account number. Thus, we agree that this information is subject to section 552.136. We also agree that the remaining information you have marked is subject to section 552.136. Therefore, the department must withhold the information you have marked under section 552.136 of the Government Code. As you raise no further exceptions to disclosure, the remaining responsive information 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, 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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 359997

Enc. Submitted documents

c: Requestor
(w/o enclosures)