



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2009

Mr. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 S. Lamar
Dallas, Texas 75215

OR2009-17910

Dear Mr. Middlebrooks:

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# 364594 (DPD Public Information Request # 09-7964).

The Dallas Police Department (the "department") received a request for all records of pending investigations of a named police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of 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). 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

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.

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.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released along with the statement of the accused 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 information consists of documents pertaining to two investigations into alleged sexual harassment. You state, and we agree, that investigation 09-264 includes an adequate summary. The summary and the statement of the accused, which we have marked, are thus not confidential; however, information within the summary and the statement of the accused identifying the victim and witnesses is confidential under common-law privacy and must be withheld pursuant to section 552.101 of the Government Code. *See Ellen*, 840 S.W.2d at 525. Thus, the department must release the summary and statement of the accused, but withhold the information that you have marked which identifies the victims and witnesses under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*. The department must withhold the remaining records of this sexual harassment investigation under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*.² Investigation 09-291 does not contain an adequate summary. Thus the department must generally release the information related to this investigation. However, in releasing investigation 09-291 the department must withhold the information that we have marked which identifies the victims and witnesses under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Common-law privacy also protects medical information or information indicating disabilities or specific illnesses from required public disclosure. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find portions of the remaining information constitute highly intimate or embarrassing information of no legitimate public concern. The department must withhold this information, which you have marked, under section 552.101 in conjunction with common-law privacy.

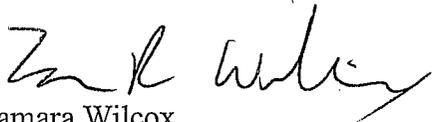
The remaining information contains information subject to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). Accordingly, the department must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.117 of the Government Code. The department must release the remaining information.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 364594

Enc. Submitted documents

c: Requestor
(w/o enclosures)