



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-10817

Dear Ms. Armstrong:

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# 387245 (DPD ORR 2010-4199).

The Dallas Police Department (the "department") received a request for the internal affairs division files, unit files, and department investigations pertaining to a named department officer; complaints filed by the named officer; and notes, documents, and e-mails written by the named officer during a specified time period. You claim 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 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 common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

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 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 the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held "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, under *Ellen*, 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, 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 contains an investigation report, witness statements, a response statement by the accused, investigation records, and supporting documentation pertaining to an investigation of alleged sexual harassment. The submitted investigation report includes an adequate summary of the investigation. Thus, the summary and accused's statement, which we have marked, are not confidential; however, the remaining submitted investigation information, which we have also marked, must be withheld under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.² As for the summary and accused's statement, the department must withhold the alleged victim's and witnesses' identifying information, which we have marked, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

You have also submitted information that is not part of the investigation of alleged sexual harassment. In this instance, based on the request and the submitted information, we find

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

portions of this remaining information are protected by common-law privacy. Thus, this protected information, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace 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.³ Gov't Code § 552.117(a)(2). In the remaining information, we have marked peace officers' home addresses, home telephone number, and family member information. This information must be withheld under section 552.117(a)(2) of the Government Code.

Section 552.136(b) of the Government Code states "[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." *Id.* § 552.136. You have marked the information you seek to withhold in the remaining information. You represent the marked information consists of employees' identification numbers, which are also used as employees' credit union bank account numbers. Thus, the department must withhold the employee identification numbers you have marked, and the additional number we have marked, in the remaining information under section 552.136 of the Government Code.

The remaining information includes e-mail addresses subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).⁴ *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.⁵ *See id.* § 552.137(b).

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

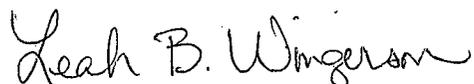
⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, with the exception of the summary and accused's statement, the department must withhold the marked sexual harassment investigation records under section 552.101 of the Government Code in conjunction common-law privacy and the holding in *Ellen*. Furthermore, the department must withhold the information we have marked in the summary and statement under section 552.101 of the Government Code in conjunction common-law privacy and the holding in *Ellen*. The department must also withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy; section 552.117(a)(2) of the Government Code; section 552.136 of the Government Code; and section 552.137 of the Government Code. The remaining 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 387245

Enc. Submitted documents

c: Requestor
(w/o enclosures)