



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2010

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 Riverfront, LB-31
Dallas, Texas 75207-4313

OR2010-11187

Dear Ms. Lutton:

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# 387847.

The Dallas County Sheriff's Department (the "sheriff") received a request for information pertaining to a named individual.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.² 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 common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

¹You state the requestor clarified his request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²Although you initially assert the submitted information is subject to section 552.103 of the Government Code, you have not provided any arguments in support of that assertion; thus, we assume you have withdrawn your claim under section 552.103.

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.*

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. We note that supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context. Further, since 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 pertains to a claim of sexual harassment. Upon review, we find the submitted report we have marked constitutes an adequate summary of the investigation into alleged sexual harassment. Thus, pursuant to section 552.101 and the ruling in *Ellen*, this investigation report is not confidential under common-law privacy. However, the identifying information of the alleged victim and witnesses in this report, which we have marked, must be withheld under section 552.101 in conjunction with common-law privacy. Additionally, the sheriff must withhold the remaining records of the sexual harassment investigation under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*.

Section 552.101 also encompasses information other statutes make confidential, including section 1703.306(a) of the Occupations Code. Section 1703.306(a) provides, "[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]" Occ. Code § 1703.306(a). It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a).

Accordingly, we conclude the sheriff must withhold the portions of information acquired from a polygraph examination, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code. However, you have not demonstrated the remaining information you have marked was acquired from a polygraph examination; thus, it may not be withheld on the basis of section 1703.306.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, personal cellular telephone and pager number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the sheriff must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

In summary, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the ruling in *Ellen*. The sheriff must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The sheriff must withhold the information we have marked pursuant to section 552.117(a)(2) 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/dls

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Enc. Submitted documents

c: Requestor
(w/o enclosures)