



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 3, 2010

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2010-18139

Dear Ms. Njuguna:

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# 401735 (PIR No. 17720).

The City of Houston (the "city") received a request for all Office of the Inspector General complaints from and against a named individual. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. This section 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 (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 that 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, 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). However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. We note supervisors are generally not witnesses for purposes of *Ellen*, and thus, supervisors’ identities generally may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, 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 consists of two sexual harassment investigations. The information in Exhibit 2 does not contain an adequate summary of the investigation into alleged sexual harassment. Thus, the information in Exhibit 2 must be released, with the identities of the victim and witnesses, which we have marked, redacted under section 552.101 in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. The remaining information in Exhibit 2 does not identify any victims or witnesses of the alleged sexual harassment for the purposes of *Ellen*. *Id.* Thus, the city may not withhold any of the remaining information in Exhibit 2 under section 552.101 on the basis of common-law privacy and the holding in *Ellen*. Upon review, we determine the information in Exhibit 3 contains an adequate summary of the alleged sexual harassment investigation. The summary is not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary identifying the victim and witness, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. *See id.* Because there is an adequate summary, the city must also withhold the remaining information in Exhibit 3 under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

We note the remaining information contains information that may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the 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 that this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code §§ 552.117(a)(1), .024. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

telephone phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) on behalf of a former or current employee who has made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Therefore, the city must withhold the cellular telephone number we have marked pursuant to section 552.117(a)(1) if the employee concerned timely elected to keep the marked information confidential under section 552.024; however, the city may only withhold this cellular telephone number if the employee concerned paid for the cellular telephone service with his own funds. If the employee did not make a timely request for confidentiality or did not pay for the cellular telephone service, the information at issue must be released.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. The city must also withhold the cellular telephone number we have marked pursuant to section 552.117(a)(1) of the Government Code if the employee concerned timely elected to keep his personal information confidential under section 552.024 of the Government Code. However, the city may only withhold this cellular telephone number if the employee paid for the cellular telephone service with his own funds. 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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 401735

Enc. Submitted documents

c: Requestor  
(w/o enclosures)