



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2011

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P O Box 9277
Corpus Christi, Texas 78469

OR2011-02175

Dear Mr. Bounds:

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# 408968.

The City of Corpus Christi (the "city") received a request for the papers sent to the city's legal department regarding a complaint made against a city employee by a named person. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 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. Here, however, the information at issue concerns allegations that a city employee sexually harassed a member of the public, not a fellow employee. 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*.

We note, however, that a portion of the submitted information, which we have marked, is subject to section 552.117.¹ Section 552.117 of the Government Code exempts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential pursuant to section 552.024. *See* Gov't Code §§ 552.117(a)(1), .024(b). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time the governmental body receives the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. If the employee to whom the marked information pertains timely requested confidentiality under section 552.024, then the city must withhold it under section 552.117(a)(1). If the employee did not timely elect to withhold his personal information, then the city may not withhold the information marked under section 552.117(a)(1) of the Government Code.

In summary, if the employee at issue timely elected confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117. The remaining information must be released to the requestor.

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)

¹The 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).

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 408968

Enc. Submitted documents

c: Requestor
(w/o enclosures)