



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 23, 2011

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
City of Dallas  
1500 Marilla Street, Room 7BN  
Dallas, Texas 75201

OR2011-03972

Dear Mr. Ernst:

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# 411990.

The City of Dallas (the "city") received two requests from the same requestor for multiple categories of information related to a named former municipal judge, including all notifications that the named former municipal judge is currently taking or planning to take legal action against the city. You state you will release some of the requested information. You claim that 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.

We note some of the submitted information was the subject of two previous requests for information, as a result of which this office issued Open Records Letter No. 2010-13923 (2010) and Open Records Letter No. 2010-14302 (2010). In those rulings, we concluded the city must release the summary of the investigation of alleged sexual harassment and the statements of the person accused of sexual harassment, but must withhold the identity of the victim and the witnesses and the rest of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the city must continue to rely on Open Records Letter No. 2010-13923 and Open Records Letter No. 2010-14302 as previous determinations and withhold or release

the information we have marked in accordance with those rulings.<sup>1</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your argument under section 552.101 for the remaining 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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (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. See *id.* at 683. The identity of an alleged victim of sexual harassment is excepted from public disclosure under section 552.101 in conjunction with common-law privacy. See *Ellen* 840 S.W.2d 519 (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Accordingly, we conclude the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must continue to rely on Open Records Letter No. 2010-13923 and Open Records Letter No. 2010-14302 as previous determinations and withhold or release the information we have marked in accordance with those rulings. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

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<sup>1</sup>You inform us that the victim of the alleged sexual harassment has filed a charge of employment discrimination with the Texas Workforce Commission (the "TWC"). See Labor Code § 21.204. We note that the victim did not waive her right to the privacy of the details of the alleged sexual harassment in filing her charge with the TWC. See *id.* § 21.304 ("An officer or employee of the [TWC] may not disclose to the public information obtained by the [TWC] under Section 21.204 [of the Labor Code] except as necessary to the conduct of a proceeding under this chapter.").

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 411990

Enc. Submitted documents

c: Enclosures  
(w/o enclosures)