



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 21, 2011

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

OR2011-10486

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# 424504.

The City of Corpus Christi (the "city") received a request for copies of all discrimination complaints filed against the city since January 2010. You state the city is releasing some of the requested information. You also state the city has redacted the home addresses and telephone numbers of current and former city employees under section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>1</sup> You claim the marked portions of the submitted records are 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 if it (1) contains highly intimate or embarrassing facts, the publication

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<sup>1</sup>Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, family member information, and emergency contact information of a current or former employee of a governmental body. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)(1)). Section 552.024(c) of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee chooses not to allow public access to the information in accordance with section 552.024(b). See Gov't Code § 552.024(b), (c).

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied common-law privacy to records of an investigation of alleged sexual harassment. The information at issue in *Ellen* included witness statements, an affidavit in which the individual accused of misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* But the court concluded "the public does 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, the identities of the victims and witnesses in an investigation of alleged sexual harassment must be withheld from the public under common-law privacy and the decision in *Ellen*.

The submitted records are complaints of employment discrimination that were filed against the city. After reviewing these complaints, we have marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and the court's holding in *Ellen*. However, we find the remaining information you seek to withhold is not, in this context, protected by *Ellen* and must be released.

You also seek to withhold portions of the remaining information under common-law privacy. This information reveals the basis of the employees' employment discrimination complaints. This office has found that the public has a legitimate interest in the conditions of employment and job performance of employees of governmental bodies. *See e.g.*, Open Records Decisions Nos. 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find most of the information you seek to withhold is of legitimate public interest. Therefore, this information is not protected by common-law privacy. We note, however, information revealing specific medical conditions or disabilities is excepted from required public disclosure under common-law privacy. *See generally* Open Records Decision Nos. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Portions of the remaining information reveal the specific medical conditions or disabilities of certain employees. Because it is not necessary to disclose this information to discern the basis of the employees' complaints, we conclude this information, which we marked, is of no legitimate public interest. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information contains the birth dates of city employees. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a).<sup>2</sup> The Texas Supreme Court recently held section 552.102(a) exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Accordingly, the birth dates we marked must be withheld under section 552.102(a) of the Government Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The birth dates we marked must be withheld under section 552.102 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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/eb

Ref: ID# 424504

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).