



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 23, 2017

Ms. Julie Pandya Doshier
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2017-19296

Dear Ms. Doshier:

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# 672250 (Reference No. 87142)

The Allen Police Department (the "department"), which you represent, received a request for a specified internal affairs file of the requestor. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82.

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 the *Ellen* decision 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 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*, along with the statement of the accused. However, 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 victims and witnesses must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

The information in Exhibit B pertains to a sexual harassment investigation subject to the ruling in *Ellen*. We further find the information at issue includes an adequate summary of the investigation, as well as statements by the person accused of sexual harassment. Thus, with the exception of the adequate summary and the statements of the accused, which we marked, the department must withhold the submitted information in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. The adequate summary and statements of the accused are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statements identifying victims and witnesses must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*, the department must withhold the identifying information of the victims and witnesses, which we have indicated, within the adequate summary and statements of the accused.

Next, we address your argument under section 552.117 of the Government Code for the remaining information. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. You state the employees at issue have

made requests for confidentiality under section 552.024 prior to the date of the instant request. Accordingly, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. We note portions of the information you marked pertain to individuals who have been de-identified and whose privacy interests are thus protected. We also note section 552.117(a)(1) is not applicable to a former spouse or the fact that a governmental employee has been divorced. We further note the requestor has a right of access to his own personal information, and the department may not withhold it from him under section 552.117(a)(1). See Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Therefore, the department may not withhold any of the remaining information under section 552.117 of the Government Code.

In summary, with the exception of the adequate summary and the statements of the accused, which we marked for release, the department must withhold the submitted information in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. In releasing the adequate summary and the statements of the accused, the department must withhold the identifying information of the victims and witnesses, which we indicated under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. The department must withhold the information we marked under section 552.117(a)(1) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 672250

Enc. Submitted documents

c: Requestor
(w/o enclosures)