



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 2, 2017

Ms. Erin D. Thorn  
Assistant District Attorney  
Hidalgo County  
100 East Cano  
Edinburg, Texas 78539

OR2017-25128

Dear Ms. Thorn:

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# 683382 (ORR# 2017-0089.DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for personnel records, a photograph, and a specified investigation related to a named individual. The sheriff's office states it has released some information. The sheriff's office claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the sheriff's office claims 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 exception encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement (the "commission") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. Exhibit C was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also 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). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

Furthermore, 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 that, because 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). We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

Upon review, we agree the remaining information 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 a statement by the individual accused of sexual harassment. Thus, with the exception of the summary and statement of the accused, which we have marked for release, the sheriff's office must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. The summary and statement of the accused are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statement 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, the sheriff's office must withhold the identifying information of the victims and witnesses we marked within the adequate summary and statement of the accused pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.<sup>1</sup> Furthermore, we find the additional information we have marked within the statement of the accused meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information within the adequate summary or statement of the accused is highly intimate or embarrassing and of no legitimate public interest and thus, none of it may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the sheriff's office has failed to demonstrate how any of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>2</sup> See Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance we are unable to determine whether the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12; therefore, we must rule conditionally. If the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12, then the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is not a currently licensed peace officer as defined by article 2.12, the sheriff's office may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

In that instance, some of the remaining information may be subject to section 552.117(a)(1) of the Government Code. 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 *id.* § 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employee whose information is at issue did not timely request confidentiality under section 552.024, the sheriff's office may not withhold the information under section 552.117(a)(1).

In summary, the sheriff's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. With the exception of the adequate summary and the statement of the accused, which we have marked for release, the sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. The sheriff's office must withhold the identifying information of the

---

<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. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

victims and witnesses, and the additional information we have marked, within the adequate summary and statement of the accused, under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. If the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the employee whose information is at issue is not a currently licensed peace officer as defined by article 2.12, and timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The sheriff's office must release the remaining information within the adequate summary and statement of the accused.

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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/eb

Ref: ID# 683382

Enc. Submitted documents

c: Requestor  
(w/o enclosures)