



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 30, 2017

Mr. Randall Miller  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5th Floor  
Dallas, Texas 75202-3317

Ms. Kathryn Kraft  
Assistant District Attorney  
Dallas County  
411 Elm Street, Fifth Floor  
Dallas, Texas 75202-3317

OR2017-27259

Dear Mr. Miller and Ms. Kraft:

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# 686014.

Dallas County (the "county") received six requests for information pertaining to administrative investigations and six named county employees.<sup>1</sup> You state the county released some information. You claim the submitted information is excepted from disclosure

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<sup>1</sup>You state the county sought and received clarification of the sixth request. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Further, we note in a letter dated October 17, 2017, the county states it wishes to withdraw a portion of its request for a ruling in regard to the sixth request for information because the responsive records will be released to the requestor in response to his modified request. This ruling does not address the public availability of information the county no longer seeks to withhold.

under sections 552.101, 552.103, and 552.108 of the Government Code. Additionally, you state you notified individuals of their rights to submit comments to this office why some of the submitted information should not be released.<sup>2</sup> See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note the request received from the sixth requestor is broader than the requests received from the other requestors. Thus, the county need not release information to the other requestors that is not responsive to their request for information.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The information at issue consists of an administrative investigation of county Marshal's Service employees. However, you provide a representation from the Dallas County District Attorney's Office (the “district attorney's office”) informing us it objects to the release of the submitted information under section 552.108 because the information at issue pertains to active criminal investigations by its Public Integrity Unit. Based upon this representation, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we

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<sup>2</sup>As of the date of this letter, we have not received any comments from the third parties.

<sup>3</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

find the county may withhold the information you indicated under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>4</sup>

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 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). 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.

In this instance, the remaining information pertains to a sexual harassment investigation and, thus, is subject to the ruling in *Ellen*. Upon review, we find the remaining information includes an adequate summary of this investigation, as well as a statements by the persons accused of sexual harassment. The summary and statements of the accused are not confidential under section 552.101 in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, with the exception of the summary and the statements of the

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<sup>4</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

accused at issue, the county must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*.<sup>5</sup> We note, however, information within the summary and statements of the accused that identifies the victim and witnesses, which we marked, is confidential under common-law privacy and must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. *Id.* However, we find none of the remaining information identifies a victim or witness to the investigation. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy 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. Open Records Decision No. 455 at 4 (1987). 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 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information, we find you have failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the county may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

In summary, the county may withhold the information you indicated under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. With the exception of the adequate summary and the statements of the accused, the county must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. Pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*, the district must withhold the identifying information of the victims and witnesses, which we marked, within the adequate summaries and statements of the accused. The county must release the remaining information.

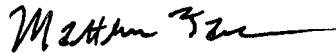
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read "Matthew Taylor", with a long horizontal flourish extending to the right.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/tdw

Ref: ID# 686014

Enc. Submitted documents

c: 5 Requestors  
(w/o enclosures)

5 Third Parties  
(w/o enclosures)