



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 21, 2017

Mr. B. Calvin Hendrick  
Counsel for the City of Odessa  
Shafer, Davis, O'Leary & Stoker, P.C.  
P.O. Drawer 1552  
Odessa, Texas 79760-1552

OR2017-29088

Dear Mr. Hendrick:

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# 689202.

The City of Odessa (the "city") received a request for information pertaining to a specified investigation relating to the requestor's complaint. You claim 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

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 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, the identity of the individual accused of sexual harassment is not protected from public disclosure. Further, 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. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

The submitted information relates to an investigation into alleged sexual harassment. Upon review, we determine the information at issue does not contain an adequate summary of the alleged sexual harassment. Because there is no adequate summary of the investigation, the city must generally release the information at issue. However, the information at issue contains the identity of the alleged sexual harassment victim and witnesses. We note the requestor is the alleged sexual harassment victim. Section 552.023 of the Government Code states an individual has a special right of access to private information concerning herself. *See* Gov't Code § 552.023(a), (b) (individual has special right of access to information that relates to himself and is protected by laws intended to protect his privacy interests, and governmental body may not deny access on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the requestor has a right of access to information pertaining to herself that would otherwise be private. Accordingly, the city must withhold the identifying information of the witnesses, which we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. *See Ellen*, 840 S.W.2d at 525. However, we find the remaining information is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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. 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. We note section 552.117 protects personal privacy. Accordingly, the requestor has a right of access to her own information under section 552.023 of the Government Code and the city may not withhold such information from this requestor under section 552.117. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, we find none of the remaining information is subject to section 552.117. Thus, the city may not withhold any portion of the remaining information under section 552.117(a)(1) of the Government Code.

In summary, the city must withhold the identifying information of the witnesses, which we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must release the remaining information.<sup>1</sup>

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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/som

---

<sup>1</sup>We note, because some of the information at issue is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office. The requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a).

Ref: ID# 689202

Enc. Submitted documents

c: Requestor  
(w/o enclosures)