



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2018

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

OR2018-03564

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# 696816 (File No. 2017-0128-DA.CO).

The Hidalgo County Public Affairs Office (the "county") received a request for complaints and "write ups" against a named employee and training the employee attended. The county has released some information and asserts Exhibits B and C are excepted from public disclosure under section 552.101 of the Government Code. We have considered the county's arguments and reviewed the submitted information.

Section 552.101 excepts "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 if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the right of common-law privacy 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 that "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.*

Here, the county explains it will release Exhibit D as an adequate summary of the sexual harassment investigation, and the summary does not contain the complainant's or witnesses' identities. We agree the county must release Exhibit D as an adequate summary. However, the county must release the accused's statement also, which we have marked. Furthermore, based on *Ellen*, the county must withhold the complainant's identifying information we marked in the accused's statement under section 552.101 in conjunction with common-law privacy. The county must withhold the remainder of Exhibit B under section 552.101 in conjunction with *Ellen*.

The county also seeks to withhold the date of birth in Exhibit C under section 552.101 in conjunction with common-law privacy. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the county must withhold the date of birth in Exhibit C under section 552.101 in conjunction with common-law privacy.

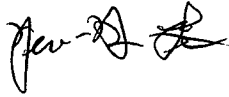
In summary, the county must withhold the date of birth in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy and release the remainder of Exhibit C. The county must release Exhibit D and the accused's statement in Exhibit B after redaction of the complainant's identifying information we marked pursuant to section 552.101 in conjunction with *Ellen* and common-law privacy. The county must withhold the remainder of Exhibit B pursuant to section 552.101 in conjunction with *Ellen* and common-law privacy.

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, 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,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/gw

Ref: ID# 696816

Enc. Marked documents

c: Requestor
(w/o enclosures)