



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 17, 2019

Mr. James Santangelo
Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2019-19461

Dear Mr. Santangelo:

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# 775668 (ORR# MCAG 19-14).

The City of Missouri City (the "city") received a request for information pertaining to a specified internal affairs investigation involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You inform us some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-14333 (2019). In that ruling, we determined (1) the officer's TCOLE number is not subject to the Act and need not be released; (2) the city may continue to rely on Open Records Letter No. 2018-29669 as a previous determination; (3) the city must withhold information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (4) the city must withhold all current and former employees' dates of birth under section 552.102(a) of the Government Code; (5) the city must withhold information under section 552.117(a)(2) of the Government Code if the information pertains to individuals who are currently licensed peace officers as defined by article 2.12 and may only withhold the cellular telephone numbers if the cellular telephone service is not paid for by the governmental body; (6) the city must withhold information under section 552.117(a)(1) of the Government Code if the individuals at issue are not currently licensed

peace officers and have timely requested confidentiality under section 552.024 of the Government Code and may only withhold the cellular telephone numbers if the cellular telephone service is not paid for by the governmental body; (7) the city must withhold the information we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (8) the city must withhold motor vehicle record information under section 552.130 of the Government Code; (9) the city must withhold e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their disclosure; (10) the city may withhold social security numbers under section 552.147 of the Government Code; and (11) the city must release the remaining information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, the city must continue to rely on Open Records Letter No. 2019-14333 as a previous determination and withhold or release the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addresses in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You inform us the submitted information is not subject to the prior ruling. Therefore, we address your arguments for 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 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 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. You seek to withhold the submitted information under common-law privacy and the ruling in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. We note the ruling in *Ellen* was applicable to investigations involving sexual harassment in the workplace. Upon review, we find the responsive information does not constitute a sexual harassment investigation for the purposes of *Ellen*. Accordingly, none of the responsive information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*.

In summary, for the information that is identical to the information previously requested and ruled upon by this office, the city must continue to rely on Open Records Letter No. 2019-14333 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must release the submitted 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.

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,

A handwritten signature in black ink that reads "Kimbell Kesling". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 775668

Enc. Submitted documents

c: Requestor
(w/o enclosures)