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ATTORNEY GENERAL OF TEXAS

November 26, 2019

Ms. Sylvia McClellan  
Assistant City Attorney  
City of Dallas  
1400 South Lamar, 6th Floor, 6W  
Dallas, Texas 75215

OR2019-33444

Dear Ms. McClellan:

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# 798543 (DPD Request No.: D022459-080219 and D022765-080519).

The Dallas Police Department (the "department") received two requests from the same requestor for information pertaining to harassment and sexual harassment investigations during a particular time period. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</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 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 or embarrassing by the

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<sup>1</sup> We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301. Nevertheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Thus, we will consider the applicability of section 552.101 to the submitted information. *See id.* §§ 552.007, .302, .352.

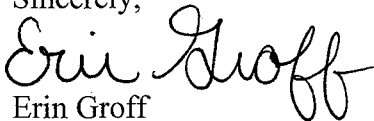
<sup>2</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Common-law privacy protects information pertaining to the identities of victims of sexual assault and victims of and witnesses to sexual harassment. Open Records Decision No. See Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). However, 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). Upon review, we find most of the information you marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information you marked is highly intimate or embarrassing and of no legitimate public concern. Therefore, the department may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, the department 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/mo

Ref: ID# 798543

Enc. Submitted documents

c: Requestor  
(w/o enclosures)