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ATTORNEY GENERAL OF TEXAS

April 1, 2020

Mr. John Wilder
Counsel for Anna Independent School District
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.
P. O. Box 168046
Irving, Texas 75016

OR2020-09947

Dear Mr. Wilder:

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# 819858.

The Anna Independent School District (the "district"), which you represent, received a request for all complaints filed by a named individual or about a named individual during a specified time period.¹ 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 552.117(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

¹ We note the district sought and received clarification of the information requested. *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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You state and provide documentation showing one of the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code. Accordingly, the district must withhold the information you marked under section 552.117(a)(1) of the Government Code. Further, if the individual whose information we have marked timely requested confidentiality pursuant to section 552.024 of the Government Code, the district must withhold the additional information we have marked under section 552.117(a)(1) of the Government Code

Section 552.101 of the Government Code 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 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 common-law privacy to information relating to an investigation of alleged 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. *See* 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.* 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 along with the statement of the accused under *Ellen*, but the identities of the victim 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). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context. We also note information belonging to an individual who has been de-identified may not be withheld under common-law privacy as the de-identified individual's privacy interests are protected.

In this instance, the submitted information is related to a sexual harassment investigation and does not include an adequate summary. Therefore, the district must generally release the information pertaining to the investigation. However, this information contains the identities of the alleged sexual harassment victim and witnesses. Therefore, with the

exception of the information we have marked for release, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. See 840 S.W.2d at 525. However, we find the district has not demonstrated any portion of the remaining information identifies a victim or witness of sexual harassment and, thus, has not demonstrated the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy and *Ellen*.

In summary, the district must withhold the information you marked under section 552.117(a)(1) of the Government Code. If the individual whose information we have marked timely requested confidentiality pursuant to section 552.024 of the Government Code, the district must withhold the additional information we have marked under section 552.117(a)(1). With the exception of the information we have marked for release, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. The district 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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 819858

Enc. Submitted documents

c: Requestor
(w/o enclosures)