



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 10, 2022

Ms. Amanda K. Davis  
Counsel for the Town of Little Elm  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2022-16774

Dear Ms. Davis:

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# 952975 (ORR Nos. O000427 and P000431).

The Town of Little Elm (the "town"), which you represent, received two requests for information pertaining to a former town police officer.<sup>1</sup> 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.

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.

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<sup>1</sup> You inform us the town sent the requestors an estimate of charges pertaining to the requests pursuant to section 552.2615 of the Government Code. *See* Gov't Code §§ 552.2615 (providing governmental body shall provide requestor with estimate of charges if charges exceed \$40). The estimate of charges required the requestors to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a) (providing governmental body may require a deposit or bond for payment of anticipated costs if the governmental body has provided the requestor with the required written itemized statement detailing the estimated charge for providing the copy and if the charge is estimated to exceed \$100).

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.

The submitted information relates to investigations into alleged sexual harassment. Upon review, we find investigation number 14-003 contains an adequate summary of the alleged sexual harassment. Investigation number 14-003 also contains the statement of the accused. The summary and statement of the accused are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statement that identifies the victims and witnesses must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. See *Ellen*, 840 S.W.2d at 525. Therefore, pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*, the town must withhold the identifying information of the victim and witnesses, which we have marked, within the information at issue. However, we find the town has not demonstrated the remaining information within the documents at issue identifies the victims or witnesses. Accordingly, the remainder of the information within the summary and statement of the accused is not confidential, and may not be withheld on that basis. Because there is an adequate summary, the town must also withhold the remaining information in investigation number 14-003, which we have indicated, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. We also note the remaining investigation does not include an adequate summary. Therefore, the town must generally release the information pertaining to the remaining investigation. However, this information contains the identities of the alleged sexual harassment victim and witnesses. Therefore, the town must withhold the identifying information of the alleged victim and witnesses, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. See *id.* However, we find the town 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*.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code §§ 552.117(a)(2), 552.003(1-b) (defining "honorably retired" for purposes of the Act). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). We have marked information under section 552.117 that consists of the personal information of a peace officer who was employed by the town and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is a current or honorably retired peace officer as defined by article 2.12, the town must withhold the information we marked under section 552.117(a)(2) of the Government Code.

If the information we marked under section 552.117 pertains to an individual who is no longer a current or honorably retired peace officer, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 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 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 who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual at issue is not a current or honorably retired peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, the town must withhold the marked information under section 552.117(a)(1) of the Government Code.

In summary, the town must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The town must also withhold the information we have marked under section 552.117(a)(2) of the Government Code if the individual at issue is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure; however, if this individual is not a current or honorably retired peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the town must withhold the information at issue under section 552.117(a)(1) of the Government Code. The town 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/jm

Ref: ID# 952975

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)