



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1994

Mr. Burton Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR94-252

Dear Commissioner Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code, chapter 552. Your request was assigned ID# 23761.

The Texas Department of Human Services (the "department") has received a request for "all . . . information gathered during the 'investigation'" into certain allegations of sexual harassment. The department has submitted the investigation file for our review. It asserts that the witness statements taken during the course of the investigation contained under tab F are excepted from required public disclosure under section 552.101 of the act. It also asserts that "names and identifying case numbers of Department applicants and recipients" and "the name of a witness and a concern expressed by a supervisor" contained under tab G are excepted from required public disclosure under section 552.101.

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court concluded that section 552.101 of the act protects from required public disclosure information the release of which would constitute the common-law tort of invasion of privacy. In order to be excepted from required public disclosure under the doctrine of common-law privacy, information must contain highly intimate or embarrassing information about a person's private affairs and be of no legitimate concern to the public. *Id.* at 685. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to information relating to an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board

of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d 519. The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment were exactly the kind of information specifically excepted from required public disclosure under the doctrine of common-law privacy in *Industrial Foundation, Id.* at 525.

We have reviewed the file submitted by the department. We understand that the complaint, a document entitled "Notification of Complaint of Discrimination" and a summary of the investigation have been released to the requestor. Given that the results of the investigation have been released to the requestor in summary form, we believe that the names and statements of the witnesses are excepted under section 552.101 of the act as construed in *Ellen*, as is any other information that would tend to identify the witnesses. Therefore, we conclude that tab F and the names of any witnesses appearing under tab G and in the "Log of Actions" are protected under section 552.101 and may not be released under the act. We do not believe, however, that the concern expressed by the supervisor under tab G is "highly intimate or embarrassing information" protected under the doctrine of common-law privacy as incorporated by section 552.101. Finally, we agree that any information identifying department applicants or recipients is also confidential under section 552.101 and must be redacted. *See* Open Records Decision No. 584 (1991).

Because case law and prior open records decisions address your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC\rho

Ref.: ID# 23761

Enclosures: Submitted documents

cc: Mr. Kenneth Davidson
1716 Palma Plaza
Austin, Texas 78753
(w/o enclosures)