



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Ms. Emily E. Helm
Director of Legal Services
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR95-862

Dear Ms. Helm:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33292.

The Texas Youth Commission (the "commission") received an open records request from a former commission employee for "a complete copy of the investigative package, to include audio cassette tapes," concerning allegations of sexual harassment. You contend that, except for a summary of the investigation findings, which was previously provided to the requestor, the requested information is protected by common-law privacy and thus must be withheld pursuant to section 552.101 of the Government Code.

We agree. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

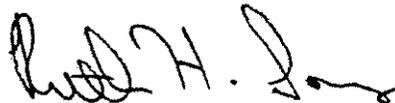
In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim 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. *Id.*

The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *Id.* at 525. However, the *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance “the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements.” *Id.* at 525.

In this instance, you inform this office that the commission has released to the requestor a “summary” of the allegations of sexual harassment in correspondence to him dated April 18, 1995. After reviewing this document, we believe that, in accordance with *Ellen*, the public’s¹ interest in the details of the alleged harassment is sufficiently served by the commission’s release of this record. Because the requestor has already obtained a copy of this record, the commission need not release any additional information in response to the open records request.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/RWP/rho

Ref.: ID# 33292

¹This office must view the open records request as one from a member of the general public, rather than from a commission employee having a special interest in the information. *See Gov’t Code § 552.223* (all requests for information shall be treated uniformly “without regard to the position or occupation of the person making the request”).

²We note that the “summary” reveals the name of the “grievant” as well as those of witnesses who assisted in the investigation. In the future, these individuals’ identities must be redacted in accordance with *Ellen*.

Enclosures: Submitted documents

cc: Mr. Scott L. Bloom
3721 Rocky Ford Drive
Austin, Texas 78749
(w/o enclosures)