



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 16, 1995

Mr. Carl Mullen  
Acting Executive Director  
General Services Commission  
P.O. Box 13047  
Austin, Texas 78711-3047

OR95-1250

Dear Mr. Mullen:

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# 36344.

The General Services Commission (the "commission") received an open records request for "all statements and documents involved" in the commission's investigation of the requestor's alleged sexual harassment of a commission employee. The commission received the request on September 29, 1995, but did not request a decision from this office until October 10, 1995. You have submitted to this office for review a memorandum dated September 22, 1995, that you contend is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. In addition, you have submitted various witness statements regarding the alleged sexual harassment for which you seek protection under section 552.101 of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. *See* Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 18, 1995 Tex. Sess. Law Serv. 5127, 5139 (Vernon). When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); *Open Records Decision No. 319* (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381.

Although you contend that sections 552.107 and 552.111 of the Government Code except the memo dated September 22, 1995, from required public disclosure, you have not presented compelling reasons for withholding the records under these exceptions. The mere fact that the information is within the attorney-client privilege and thus would be excepted from disclosure under section 552.107(1) of the Government Code if the governmental body had made a timely request for an open records decision does not alone constitute a compelling reason to withhold the information from public disclosure. Open Records Decision No. 630 (1994). In addition, a governmental body's failure to meet the ten-day deadline waives the protection of section 552.111. Open Records Decision No. 473 (1987). We conclude that the commission has waived the protection of these two exceptions. You must therefore release the memorandum dated September 22, 1995, except as noted below.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. 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. *Ellen*, 840 S.W. 2d 519. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest in this matter was sufficiently served by the disclosure of these documents. *Id.* at 525. The court held, however, 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.* In concluding, the *Ellen* court held that "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.*

In this instance, you inform this office that the commission has released to the requestor a memorandum dated August 28, 1995, and a copy of the recorded interview with the requestor, which provide details of the alleged harassment. After reviewing the document, we believe that, in accordance with *Ellen*, the public's<sup>1</sup> interest in the details

---

<sup>1</sup>This office must view the open records request as one from a member of the general public, rather than from a district employee having a special interest in the information. See Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 15, 1995 Tex. Sess. Law Serv. 5127, 5134 (Vernon) (amending Gov't Code

of the alleged harassment is sufficiently served by the commission's release of these records. Because the requestor has already obtained a copy of these records, the commission need not release the witness statements to the requestor. We note, however, that the document that you claim is excepted from disclosure under sections 552.107 and 552.111 reveals the name of the alleged victim. You must withhold the victim's identity in accordance with *Ellen*.

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 36344

Enclosures: Submitted documents

cc: Mr. Willy Niwagaba  
c/o Mr. Carl Mullen  
Acting Executive Director  
General Services Commission  
P.O. Box 13047  
Austin, Texas 78711-3047  
(w/o enclosures)

---

(Footnote continued)

§ 552.223) (all requests for information shall be treated uniformly "without regard to the position or occupation of the requestor").