



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 4, 1995

Mr. Mark C. Goulet  
Attorney for Boerne I.S.D.  
Walsh, Anderson, Underwood,  
Schulze & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR95-1347

Dear Mr. Goulet:

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# 33807.

The Boerne Independent School District (the "district"), which you represent, received an open records request from an attorney representing one of the district's employees.<sup>1</sup> The requestor seeks "any and all documents containing allegations against [his client] or making claims regarding his conduct which [the district] has received from" a named former district employee. You have submitted to this office as responsive to the request a letter of resignation written by the former employee. You contend that this record comes under the protection of common-law privacy as incorporated into section 552.101 of the Government Code.<sup>2</sup>

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

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<sup>1</sup>We decide here only the extent to which the letter of resignation is available to the requestor as a member of the general public. See Gov't Code § 552.007(b) (prohibition of "selective disclosure"). *But see* n.2, *infra*.

<sup>2</sup>We note that the letter of resignation contains the names of two students. These students' names must be withheld from the public in accordance with the Family Educational Rights and Privacy Act of 1974. 20 U.S.C. § 1232g.

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.

You describe the letter of resignation as containing "highly personal information, including detailed accounts of physical and sexual harassment, and statements regarding the health and physical condition of the writer." In Open Records Decision No. 470 (1987), this office recognized that details of an employee's severe emotional job-related stress are excepted by common law privacy. Further, the details about an individual's subjective emotional state also may be protected by privacy. *See* Open Records Decision No. 539 (1990). We have marked the information that the district must withhold in accordance with these principles.

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 court ordered the release of the affidavit of the person under investigation, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* 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.*

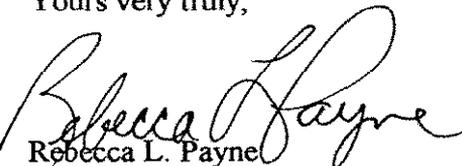
In this instance, however, it is not clear to this office whether or to what extent the district has released to the public details of the alleged sexual harassment. Consequently, we have no basis for concluding that the district has sufficiently informed the public of the details of each of the allegations against the requestor's client.

In accordance with the *Ellen* decision, the former employee's name must be redacted from the text of the letter. However, the court in *Ellen* did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity and we decline to extend such protection to the requestor's client. As noted above, sexual harassment by public employees may constitute official oppression punishable as a Class A misdemeanor. *See also Bryson v. State*, 807 S.W.2d 742 (Tex. Crim. App. 1991). Furthermore, we believe there is a legitimate public interest in the

identity of public employees accused of sexual harassment in the workplace. *See, e.g.*, Open Records Decision Nos. 484 (1987), 400 (1983). Consequently, the district must release all remaining information pertaining to the allegations because of the clear public interest in this information.<sup>3</sup> *Cf.* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

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,

  
Rebecca L. Payne  
Assistant Attorney General  
Open Records Division

RLP/RWP/ch

Ref.: ID# 33807

Enclosures: Marked documents

cc: Mr. Richard L. Arnett  
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(w/o enclosures)

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<sup>3</sup>We note that some other information contained in the letter may implicate the privacy interests of the requestor's client. However, because the requestor and his client would have a "special right of access" to any such information, *see* Gov't Code § 552.023, we need not decide at this time whether such information must be withheld from the public.