



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-1530

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 23162.

The Texas Department of Criminal Justice (the "department") received a request for all documents relating to a sexual harassment charge against the requestor. You claim that a portion of the requested information is excepted from disclosure under the right of privacy as incorporated by section 552.101 of the Government Code. We have considered the exception you claimed and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

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 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. *Ellen*, 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 that the public's interest was sufficiently served by the disclosure of such

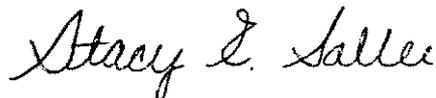
documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

There is no adequate summary of the information in the investigation and the grievance. Therefore, the summaries of the alleged victim's and witnesses' statements may not be withheld. However, based on *Ellen*, the department must withhold the identities of the alleged victim and the witnesses. We have marked the information that must be withheld. With the possible exception noted below, the department may not withhold the remaining information.¹

Federal law may prohibit disclosure of the employees' social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

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¹You state that the information submitted to this office in Exhibit "C" may have been gathered by the alleged harasser. Therefore, you seem to imply that the requestor may have a right to this information. However, the court in *Ellen* held that the purpose behind protecting the identities of the alleged victim and witnesses is to protect their privacy rights. *Ellen*, 840 S.W.2d at 524-35. Once information is disclosed to one person, in most instances, the information must be disclosed to any other person. *See* Gov't Code § 552.007. Consequently, despite the fact that the alleged harasser here may know the identities of the alleged victim and the witnesses, the department still must not disclose that information to him.

Ref: ID# 23162

Enclosures: Marked documents

cc: Mr. Benjamin W. Massey
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(w/o enclosures)