Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1996

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

OR96-1751

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28932.

The Texas Department of Criminal Justice (the "department") has received several requests for records pertaining to complaints filed against the requestor, an employee of the department. Specifically, the requestor seeks "complete copies of any and all complaints, supporting documents, and all investigations and the outcome of these investigations, that have been filed against me" in the following departmental actions: "EEO case number 940336P," "EEO case number 940813P," "EEO case number 95-098," and "IAD case number SC.01.3472.94.HQ." You object to releasing the requested information. You have submitted a representative sample of the requested information to us for review and seek to withhold it under sections 552.101 and 552.108 of the Government Code.

First, we address your assertion that section 552.101 of the Government Code excepts some of the requested information from required public disclosure. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the information submitted to us for review is protected by the doctrine of common-law privacy as applied in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files in *Ellen* contained individual witness and victim 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. 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 was sufficiently served by the disclosure of such documents. *Id.* The court held, however, that the nature of the information, that is, names of witnesses and detailed affidavits regarding allegations of sexual harassment, was exactly the kind of information specifically excluded from disclosure under the privacy exception as described in *Industrial Foundation v. Texas Industrial Accident Board,* 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Id.* at 525. 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.*

The *Ellen* decision controls the release of the documents you have submitted for our review. Included among them are witness statements, investigator's notes, inter-departmental memorandums, and other investigation records. We believe there is a legitimate public interest in the substance of the complaints regarding the allegations of sexual harassment. These documents provide a summary of the allegations similar to the records required to be disclosed by the *Ellen* court. However, the identities of the complainants and witnesses to the alleged sexual harassment are excepted from disclosure by the common-law invasion of privacy doctrine as applied in *Ellen* and *Industrial Foundation.* We have marked the type of information that identifies or tends to identify the complainants and witnesses that must not be released to the requestor. The remaining information, however, provides the information concerning the sexual harassment investigation necessary to serve the public interest and is not excepted from disclosure on the basis of common-law privacy.

You also contend that section 552.108 of the Government Code excepts the submitted information from required public disclosure. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108. Where no criminal investigation or prosecution results from an investigation for alleged misconduct, section 552.108 is inapplicable. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). You do not claim, nor is it apparent from the face of the submitted records, that the investigation is criminal in nature. Rather, the investigation appears to involve only administrative or personnel matters and is not the type of investigation that section 552.108 was designed to shield from premature public exposure. We conclude, therefore, that the department may not withhold the requested information under section 552.108 of the Government Code. Accordingly, the requested information, except for the information marked as excepted under *Ellen*, must be released in its entirety.[1]

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[1]In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the

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

Enclosures: Marked documents

Ref.: ID# 28932

cc: Mr. Henry Falgoust
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(Footnote continued)

withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.