



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 19, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0772

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114652.

The Texas Department of Public Safety (the "department") received a request for information relating to complaints against the requestor's client, a department employee, and any reprimands or warnings given to said employee. You state that you will release a copy of the complaint, the complaint notification, a progress report, and a counseling record to the requestor. However, you assert that the remaining requested information, consisting of witnesses' statements and supervisor notes, is excepted from disclosure pursuant to section 552.101 of the Government Code. You argue that the "documents contain information relating to sexual harassment," and therefore, is excepted from public disclosure pursuant to *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied). We have considered your arguments and reviewed the information submitted.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. of the S. 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. Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519, 525 (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 a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the affidavit of the person under investigation and the summary of the investigation, stating that the public's interest was sufficiently served by the disclosure of these 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.*

When there is an adequate summary of the investigation, the summary must be released, but identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. When no adequate summary exists, detailed statements regarding the allegations must be released, but identities of witnesses and victims must still be redacted from the statements. *Id.* Here, the submitted documents do not include an adequate summary of the investigation. We have marked the types of information that you must withhold pursuant to common-law privacy and *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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 114652

Enclosures: Marked documents

cc: Mr. Tony Conners
Brim, Arnett & Robinett, P.C.
2525 Wallingwood Drive
Building 14
Austin, Texas 78746
(w/o enclosures)