



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 14, 1998

Mr. Helmut (Hal) Talton  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483

OR98-1665

Dear Mr. Talton:

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# 116750.

The Texas Department of Transportation (the "department") received a request for "a copy of the Civil Right Report of Investigation that was completed by the Civil Rights Division out of Houston, Texas." You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and 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.

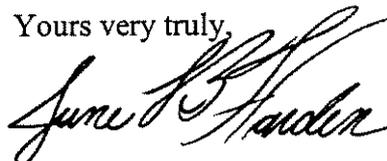
In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit 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 exists an adequate summary of the sexual harassment investigation in the documents provided to this office. When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure.<sup>1</sup> We also find that the public interest in the statements of the alleged harassers outweighs any privacy interest they may have in that information. Therefore, the department may not withhold this information. We have marked the types of information that you must withhold pursuant to common-law privacy and *Ellen*.

The documents that must be released reveal personal family member information of a public employee. It is possible that this information may be confidential under section 552.117 of the Government Code, and therefore, depending on the specific circumstances, may not be released. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>Here, the requestor has a special right of access to information that relates to herself. Gov't Code § 552.023. We caution, however, that some of the information may be confidential by law or may implicate the privacy interest of a third party. Therefore, if the department receives a request in the future, the department should seek a ruling from this office and reassert its privacy exception before releasing any of the requested information. *See* Gov't Code § 552.352.

Ref.: ID# 116750

Enclosures: Submitted documents

cc: Ms. Sandra S. York  
1061 N. Crockett  
San Benito, Texas 78586  
(w/o enclosures)