



October 12, 1999

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR99-2912

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129470.

The Texas Department of Transportation (the "department") received a request for all information pertaining to an investigation resulting from an employee's complaint of sexual harassment. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information considered confidential under the common-law right to privacy. Information is protected by the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

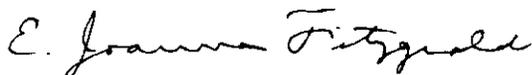
In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit 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.*

According to *Ellen*, the public has a legitimate interest in documents that adequately summarize sexual harassment allegations and the results of investigations into those allegations, but not in the identities or detailed statements of the witnesses.<sup>1</sup> *See id*; *see also* Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). We find that the “Report of Investigation,” submitted as document number 5, adequately summarizes the sexual harassment investigation. Therefore, we conclude that the department must release this report subject to the indicated redactions of witnesses’ identities. Furthermore, *Ellen* specifically requires the release of any affidavits of individuals under investigation. *Ellen*, 840 S.W.2d at 525. Therefore, the department must release the “Witness Notices” submitted as document numbers 7, 8, and 9 subject to the indicated redactions of witnesses’ names. Finally, based on the common-law right to privacy as encompassed by section 552.101 of the Government Code, the department must withhold the remainder of the submitted documents from disclosure. Therefore, for the reasons stated above, the department must withhold document numbers 2-4, 6, and 10-19. The department must release document numbers 5 and 7-9 in accordance with the marked redactions.

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.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>Ordinarily, common-law privacy, as encompassed by section 552.101 of the Government Code, requires that the identity of the victim be withheld as well as the identities of any witnesses. However, we note that in this case, the requestor is the victim and therefore has a special right of access to information concerning himself. *See* Gov’t Code § 552.023 (person has special right of access, beyond right of general public, to information excepted from disclosure by laws intended to protect that person’s privacy interests). Therefore, the department should not redact the requestor’s name, address, telephone number, or family member information from the copies of documents it releases to this requestor.

EJF\nc

Ref: ID# 129470

Encl: Submitted documents