



November 8, 1999

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P.O. Box 619428  
DFW Airport, Texas 75261-9428

OR99-3142

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129237.

The Dallas-Fort Worth International Airport Board (the "Board") received a request for information relating to the Board's investigation into sexual harassment allegations brought against the requestor. Specifically, the requestor asked for a transcribed statement of the alleged victim taken as part of the Board's investigation.<sup>1</sup> You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with caselaw and common-law privacy. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to the attorney general a copy of the written request for information as well as "a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date" no later than the 15<sup>th</sup> business day after the date of receiving the written request. Act of May 25, 1999, 76th Leg., R.S., ch 1319, § 20, 1999 Tex. Sess. Law Serv. 4500, 4508-4509 (Vernon) (to be codified as an amendment to TEX. GOV'T CODE § 552.301(e)(1)). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Act of May 25, 1999, 76th Leg., R.S., ch 1319, § 21, 1999 Tex. Sess. Law Serv. 4500, 4509 (Vernon) (to be codified as an amendment to TEX. GOV'T CODE § 552.302).

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<sup>1</sup>This request is the second that the Board has received in regard to this sexual harassment matter. Previously, the same requestor asked for a copy of the sexual harassment complaint made against him. You state that the Board has released the complaint to the requestor as instructed by this office's decision in Open Records Letter No. 99-2197 (1999).

Not only have you failed to provide a signed statement or any evidence indicating the date on which the Board received the request for information, but you have also failed to submit to this office a copy of the written request for information. Therefore, absent a compelling reason to withhold the information, the requested records must be released. However, we find that portions of the documents at issue are confidential by another source of law, and therefore a compelling reason exists to withhold these portions of the requested records. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

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 regarding 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 victim and witnesses. *See id*; *see also* Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). You state that the Board previously released the sexual harassment complaint to the requestor. However, you do not indicate that the complaint, or any other document the Board may have released to the requestor, contained a summary of the sexual harassment allegations and the results of the Board’s investigation into the allegations. Consequently, we must assume that the Board has not yet released any summary of the allegations or the investigation results. Accordingly, we find that there currently remains a legitimate public interest in the requested statement, and

therefore, the Board must release it to the requestor. However, section 552.101 in conjunction with *Ellen* requires the Board to withhold the witnesses' and the victim's identifying information. We have marked the types of information in the submitted statement that must be withheld under section 552.101.

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,

A handwritten signature in cursive script that reads "E. Joanna Fitzgerald".

E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 129237

Encl: Marked documents

cc: Mr. Robert D. Hendricks  
Chief Information Officer  
Dallas/Fort Worth International Airport  
P.O. Box 619428  
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(w/o enclosures)