



March 7, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2001-0893

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144524.

The Texas Department of Transportation (the “department”) received a request for all statements and documents relating to a specified sexual harassment investigation. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The submitted information appears to be a completed investigation. However, you have asserted section 552.101 in conjunction *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), which is other law that makes the information confidential. Accordingly, we will address your arguments.

The submitted information relates to a sexual harassment investigation. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the

common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.*

The court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment in *Ellen*. 840 S.W.2d at 519. 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. *Id.* 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 conclusion, 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.* Based on *Ellen*, a governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information which would tend to identify a witness or victim.

We are of the opinion that the document in Exhibit B and two marked documents in Tab 1 of Exhibit C are analogous to the summary released in *Ellen*. Therefore, you must release these documents, but redact the identities of the victim and any witnesses to the alleged sexual harassment. We note that you have marked the identity of the victim in the submitted documents, but have not redacted the identities of any witnesses. Therefore, we assume that the interviewed witnesses did not actually witness the alleged sexual harassment and, therefore, their identities need not be withheld under *Ellen*. We have also marked additional references to the victim as well as a reference to another sexual harassment victim which must be withheld. Therefore, you must withhold the information we have marked in Exhibit B and in the tabbed documents in Exhibit C, but release the remaining information in these documents. You must, however, withhold the remaining information submitted as Exhibit C under section 552.101 of the Government Code.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

¹Because you must withhold the remaining submitted information under section 552.101, we need not address your other asserted exceptions.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

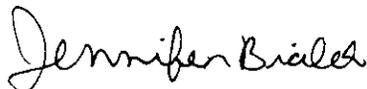
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 144524

Encl: Submitted documents

cc: Mr. John Mustachio
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(w/o enclosures)