



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2006

Ms. Carla M. Cordova
Assistant General Counsel
TDCJ—Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2006-10294

Dear Ms. Cordova:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 258421.

The Texas Department of Criminal Justice (the "department") received a request for investigation materials pertaining to allegations of sexual harassment. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In *Morales v. Ellen*, the court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment. 840 S.W.2d 519, 525 (Tex App.—El Paso 1992, writ denied). 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.* 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.*

When there is an adequate summary of an investigation, the summary and any statements of the person under investigation must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements.

The submitted information contains an adequate summary of investigations into sexual harassment allegations and statements of the accused individual. We conclude that, under *Ellen*, the department must release the marked summary and the statements of the accused. However, prior to releasing these documents in accordance with section 552.101 and the holding in *Ellen*, the department must redact the information we have marked that identifies any victims and witnesses. We note that the requestor is the alleged victim in this instance. Section 552.023 of the Government Code gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. See Gov't Code § 552.023. Thus, here, the requestor has a special right of access to her own information, and the department may not withhold that information from her under section 552.101 in conjunction with common law privacy.¹ *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We further note that supervisors are not witnesses for purposes of *Ellen*, and thus, supervisors' identities may generally not be withheld under section 552.101 and common law privacy. Accordingly, information to which the requestor has a right of access under section 552.023 may not be withheld from her under section 552.101 in conjunction with common law privacy. The remainder of the sexual harassment investigation, including witness statements and other supporting documentary evidence, must be withheld under section 552.101 of the Government Code in accordance with the common law privacy concerns expressed in *Ellen*. We also note that the remaining submitted information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the department must withhold the additional information we have marked pursuant to section 552.101 in conjunction with common law privacy.

¹We note, however, that if the department receives another request for this particular information from a different requestor, the department should again seek a decision from us before releasing this information.

We note that a portion of the remaining submitted information is subject to section 552.117 of the Government Code. Section 552.117(a)(3) excepts from public disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current and former employees of the department, regardless of whether the employees complied with section 552.1175.² Therefore, the department must withhold the information we have marked under section 552.117(a)(3).

Finally, we note that portions of the remaining submitted information contain inmate information. Section 552.134 of the Government Code provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

The remaining information contains information about an inmate confined in a facility operated by the department. Therefore, the department must withhold the information we have marked under section 552.134(a) of the Government Code.

In summary, the department must withhold: 1) the information we have marked under section 552.101 in conjunction with common law privacy; 2) the information we have marked under section 552.117(a)(3); and 3) the information we have marked under section 552.134 of the Government Code. The remaining information must be released to the requestor.

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 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).

²We note that Open Records Letter No. 2005-1067(2005) serves as a previous determination for this type of information maintained by the department.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 258421

Enc. Submitted documents

c: Ms. Penny Cooper
1011 15th Street NW
Childress, Texas 79201
(w/o enclosures)