



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2009

Ms. Patricia Fleming  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2009-03293

Dear Ms. Fleming:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 337324 (PIR No. 08-23980).

The Texas Department of Criminal Justice (the "department") received a request for all information related to a claim filed by the requestor's client. The department has released some information and asserts the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the department's claimed exception and reviewed the submitted information.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986). In *Morales v. Ellen*, 840 S.W.2d 519, 525 (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 a summary 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 summary of the investigation, stating that the public's interest was sufficiently served by the disclosure of these 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.*

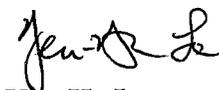
We agree the submitted information consists of a summary of an investigation of allegations of sexual harassment and several forms of discrimination. Pursuant to *Ellen*, the identity of the complainant who alleges sexual harassment is protected by the common-law privacy doctrine. *Id.* However, in this situation, because the requestor is the attorney for the alleged victim, the department may not withhold the information on the basis of protecting the victim's privacy interest. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Furthermore, the summary does not identify any witnesses to the sexual harassment complaint. Thus, the department may not withhold the information under common-law privacy.

However, the summary contains information that is confidential under section 552.117(a)(3) of the Government Code. Section 552.117(a)(3) excepts from required public disclosure the home address, telephone number, social security number, or personal family member information of a department employee. Therefore, the department must withhold the information we marked under section 552.117(a)(3).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 337324

Enc: Marked documents

c: Requestor  
(w/o enclosures)