



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2009

Ms. Ingrid K. Hansen
Deputy General Counsel
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2009-12512

Dear Ms. Hansen:

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# 354620.

The Texas Water Development Board (the "board") received a request for the requestor's personnel file, including all complaints and investigations made against the requestor during his employment. You seek to withhold records of an investigation into the requestor under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication 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, 685 (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 applied the common-law right to privacy to an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the

conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court also held that "the public does 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 a sexual harassment investigation, the summary must be released along with the statement of the accused, 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. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

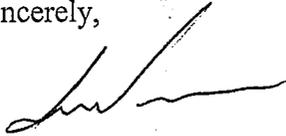
The submitted information does not contain an adequate summary of the sexual harassment investigation. Because there is no adequate summary of the investigation, the information at issue must generally be released. However, the information contains the identities of the alleged victim and witnesses of the sexual harassment. Accordingly, we conclude the board must withhold portions of the information you have marked, in addition to the information we have marked, pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy and the holding in *Ellen*. However, you have failed to demonstrate how the remaining marked information reveals the identity of a victim or witness of alleged sexual harassment; therefore, this information may not be withheld under section 552.101 of the Government code on the basis of common-law privacy and the holding in *Ellen*. Thus, except as we have marked for release, the board must withhold the marked information pursuant to section 552.101 in conjunction with common-law privacy under *Ellen*. As you raise no further exceptions, the remaining information must be released.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 354620

Enc. Submitted documents

c: Requestor
(w/o enclosures)