



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 12, 2010

Ms. Laurie Barker
Litigation Director and General Counsel
Office of Public Utility Counsel
P.O. Box 12397
Austin, Texas 78711-2397

OR2010-03576

Dear Ms. Barker:

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# 372830.

The Office of Public Utility Counsel (the "OPC") received a request for 1) the original request for public information at issue in Open Records Letter No. 2009-11386 (2009); and 2) the letter from the OPC requesting an attorney general decision on the above mentioned request, excluding any confidential attachments. You state you have released the OPC's letter requesting an attorney general decision to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment in *Morales v. Ellen*, 840 S.W.2d 519 (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.* 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.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, along with the statement of the accused, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. Because 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, the identity of the individual accused of sexual harassment is not protected from public disclosure. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

In this instance, you state the information at issue relates to a completed sexual harassment investigation for which there is an adequate summary. We note, however, the information at issue is a public information request. This information was not part of the sexual harassment investigation. However, the information contains the identity of the victim in the sexual harassment investigation, which is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the OPC must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. However, we find you have failed to demonstrate how any portion of the remaining information you marked constitutes highly intimate or embarrassing information not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the OPC must withhold the marked

e-mail address under section 552.137 of the Government Code, unless the OPC has received consent for its release.¹

In summary, the OPC must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. The OPC must also withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the OPC has received consent for its release. The remaining information must be released to the requestor.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 372830

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.