



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2011

Ms. Candice M. Gambrell  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77002-0368

OR2011-14179

Dear Ms. Gambrell:

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# 431509 (GC No. 18684).

The Houston Airport System (the "system") received a request for (1) all data in the "Airport Budgeting System database" for the last five years, (2) all data in the "PROPWorks database" for the last five years, (3) all weekly "Wage Reports" for the last five years, (4) the "Alpha Report" for each month for each of the last five years, (5) "OIG investigation reports" for the last five years, (6) and all accounting data for twelve specified "cost centers" for the last five years. You state the system will release some information to the requestor. You claim the remaining 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 representative sample of information.<sup>1</sup>

As you acknowledge, the system failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure

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<sup>1</sup>We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because your claim under section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will consider whether this exception is applicable to the information at issue.

Section 552.101 of the Government Code exempts from disclosure “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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). In *Morales v. Ellen*, 840 S.W.2d 519 (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 conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d 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 “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*, 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). 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. We note that since 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). We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

The submitted information contains adequate summaries of some of the investigations into alleged sexual harassment. Thus, these summaries are not confidential under common-law privacy. However, the portions of information within the summaries that identify the victims of and witnesses to the alleged sexual harassment, which we have marked, are confidential under common-law privacy and must be withheld pursuant to section 552.101 of the Government Code. *See Ellen*, 840 S.W.2d at 525. The system must release the remaining portions of information in the summaries to the requestor. The system must withhold the remaining information in these investigations, which we have also marked, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

The remaining investigations, however, either do not contain adequate summaries of sexual harassment investigations or do not pertain to sexual harassment. Therefore, pursuant to section 552.101 and the ruling in *Ellen*, the identities of the victims and witnesses in the remaining sexual harassment investigations are confidential under section 552.101 of the Government Code in conjunction with common-law privacy, but the remaining portions of information in these sexual harassment investigations are not confidential on that basis. *See id.* Thus, the system must withhold the information we have marked in the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*. However, we find you have failed to demonstrate the remaining investigations pertain to sexual harassment. Accordingly, the system may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*.

In summary, for the investigations pertaining to sexual harassment with adequate summaries, the system must withhold the identifying information of the victims and the witnesses we have marked in the summaries under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*. Further, with the exception of the remaining information in these summaries, the system must withhold the remaining information in these investigations, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*. For the investigations pertaining to sexual harassment without adequate summaries, the system must withhold the identifying information of the victims and the witnesses we have marked under section 552.101 in conjunction with common-law privacy and the ruling in *Ellen*. The system must release the remaining information at issue 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 431509

Enc. Submitted documents

c: Requestor  
(w/o enclosures)