



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2014

Ms. Claire Yancey
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2014-17014

Dear Ms. Yancey:

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# 537025.

The Denton County Judge, the Denton County Criminal District Attorney's Office, and Denton County (collectively the "county") received a request for the personnel file and any complaints lodged against a former county employee. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of the former county employee. Accordingly, you state the county has notified the former employee of the request for information and of his right to submit arguments to this office as to why the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released). We have reviewed the submitted information.

Initially, we note you have only submitted a letter and a county separation form for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open

¹As of the date of this letter, we have not received comments directly from the former employee.

Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683.

We note some of the submitted information pertains to an investigation of alleged sexual harassment. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of common-law privacy to information relating to an investigation of alleged 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. *See* 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 the public’s interest was sufficiently served by the disclosure of such documents. *Id.* 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 along with the statement of the accused under *Ellen*, but the identities of the victim 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.

In this instance, we find some of the submitted information is related to a sexual harassment investigation and does not include an adequate summary. Therefore, the county must generally release the information at issue. However, this information contains the identity of the alleged sexual harassment victim. Therefore, the county must generally withhold the identifying information of the alleged victim, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen* and release the

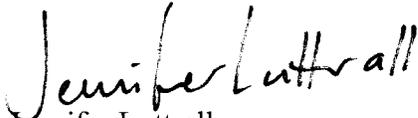
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

remaining information. *See* 840 S.W.2d at 525. However, you have submitted an e-mail from the individual whose privacy interest is at issue wherein she states she does not want her name redacted. Accordingly, if the county determines the individual whose privacy interest is at issue has waived her right to privacy of the information at issue, the county must release the submitted information in its entirety.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 537025

Enc. Submitted documents

c: Requestor
(w/o enclosures)