



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 2, 2015

Ms. Ana Vieira Ayala  
Senior Attorney & Public Information Coordinator  
Office of the General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2015-17567A

Dear Ms. Ayala:

This office issued Open Records Letter No. 2015-17567 (2015) on August 24, 2015. In our original decision, we incorrectly identified the governmental body requesting a decision as the University of Texas System rather than the University of Texas at Austin (the "university"). Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on August 24, 2015. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 586488.

The university received a request for all information related to a specified lawsuit and a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. You also state release of the submitted information may implicate the privacy interests of a named individual. Accordingly, you state you notified this individual of the request for information and of her right to submit arguments to this office as to why the submitted information should not be released.<sup>1</sup> *See id.* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

---

<sup>1</sup>As of the date of this letter, we have not received any comments from the named individual.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683.

This common-law right to privacy general protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339; *see also* Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You assert the submitted information is confidential in its entirety because it pertains to a sexual harassment victim, and the requestor knows the identity of the victim. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information must be withheld in its entirety under section 552.101 in conjunction with common-law privacy on that ground.

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 the *Ellen* decision 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 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*, along with the statement of the accused. However, 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* ORDs 393, 339. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of victims and witnesses 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. We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

You state, and we agree, the submitted information relates to an investigation of alleged sexual harassment. Upon review, we find the submitted information includes an adequate summary of the investigation, as well as a statement submitted by a representative of the person accused of sexual harassment. The adequate summary and statement of the accused are not confidential under section 552.101 in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, with the exception of the adequate summary and the statement of the accused, which we have marked, the university must withhold the submitted information under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.<sup>2</sup> We note, however, information within the statement of the accused that identifies the victim and witnesses is confidential under common-law privacy. *See id.* Therefore, the university must withhold the information that identifies the victim and witnesses, which we have marked, within the statement of the accused under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*.

We note the remaining information in the accused's statement contains some information that is subject to section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. If the former employee whose information is at issue timely elected confidentiality under section 552.024, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the former employee at issue did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, with the exception of the adequate summary of the investigation and the statement of the accused, which we have marked, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. In releasing the statement of the accused, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. To

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the university must also withhold the information we have marked in the accused's statement under section 552.117(a)(1) of the Government Code. The university must release the remaining information in the adequate summary and the statement of the accused.

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 586488

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)