



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 28, 1993

Mr. Burton Raiford  
Interim Commissioner  
The Texas Department of Human Services  
P.O. Box 14930  
Austin, Texas 78714-9030

OR93-593

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 16111.

The Texas Department of Human Services (the "department") received an open records request for the results of the department's investigation of charges of sexual harassment against a particular departmental employee. You have submitted to this office for review a document entitled "Final Report, Administrative and Civil Rights Review, Region 08" as responsive to the request. You state that you have released to the requestor most of the report; however, you seek to withhold particular marked portions of the report pursuant to the common-law privacy aspect of section 552.101 (former section 3(a)(1)) of the Open Records Act.<sup>2</sup>

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<sup>1</sup>The 73rd Legislature has repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

<sup>2</sup>Although the department did not request an open records decision from this office within the ten days required by section 552.301 (former section 7(a)) of the act, the presumption that the requested information is now public may be overcome by a demonstration that the information is protected by common-law privacy. *See* Open Records Decision No. 71 (1975).

We further note that although you cite *Bexar County Sheriff's Civil Service Comm. v. Davis*, 802 S.W.2d 659 (Tex. 1990), as authority for withholding names of the victims and witnesses, this case is inapplicable here because it does not address whether similar information must be released under the Open Records Act.

In Open Records Decision No. 579 (1990), this office held that common-law privacy did not apply to witness names and statements regarding allegations of sexual misconduct. Recently, however, the court in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. -- El Paso 1992, writ denied), addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Id.* The court held that the nature of the information, *i.e.*, the names of witnesses and their detailed affidavits regarding allegations of sexual harassment, was exactly the kind specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *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.*<sup>3</sup>

It is apparent to this office that, like the report previously released in *Ellen*, the report you have submitted to us for review is a summary of the department's investigation. Because the court in *Ellen* held that supporting data gathered during an investigation of sexual harassment, *e.g.*, notes or transcripts of witnesses statements, need not be released where a summary of the allegations has been prepared, we need not address here whether any supporting data that the department maintains comes within the ambit of the current open records request; the public interest in this instance will be served by the release of the summary report.

This office feels compelled, however, to follow the *Ellen* decision with regard to victims' and witnesses' identities.<sup>4</sup> Further, this office believes that the release of much of the information you have marked would also tend to reveal the identities of those individuals and that the department must therefore withhold this information. The remainder of the information you have marked, however, may not be withheld under the analysis in *Ellen*. We have marked those portions of the report that the department has not previously released that must be released at this time.

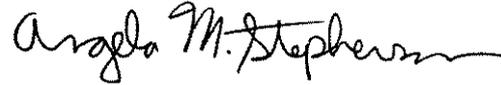
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<sup>3</sup>Although the *Ellen* court implied that the person accused of misconduct may in some instances have a privacy interest in information contained within investigatory files, we think that in the cases you have submitted for our review the public's interest in disclosure of the information outweighs the accused's privacy interest. *See Ellen* at 525.

<sup>4</sup>We agree, however, that any information contained in the report pertaining to the requestor must be released to her pursuant to section 552.023 (former section 3B) of the act. *See* Open Records Decision No. 542 (1990).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Angela M. Stepherson  
Assistant Attorney General  
Open Government Section

AMS/RWP/rho

Ref.: ID# 16111  
ID# 19123

Enclosures: Marked documents

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(w/o enclosures)