



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Mr. Pat D. Westbrook
Texas Commission for the Blind
4800 N. Lamar Blvd.
Austin, Texas 78756

OR96-1104

Dear Mr. Westbrook:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100063.

The Texas Commission for the Blind (the "commission") received a request for information pertaining to a complaint of sexual harassment. You indicate that the commission has released a number of documents concerning disciplinary action taken against the employee accused of the harassment. You assert, however, that two documents concerning the allegations are protected from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. These documents, a call narrative and an investigation report, were submitted to this office for review.

The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in sections 552.101 or section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.).

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 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.* at 525.

The court in *Ellen* did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity. However, the court held that the public possesses a legitimate interest in full disclosure of the facts surrounding employee discipline in this type of situation. *Id.* at 525. We believe that there is a legitimate public interest in the identity of public employees accused of sexual harassment in the workplace and the details of the complaint, regardless of the outcome of the investigation. See Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is generally narrow).

You contend that the commission has already released, in summary form and in compliance with *Ellen*, information responsive to the request. The commission has released information concerning disciplinary action taken in regard to the accused employee. We note, however, that details of the allegation were not released. Those details are contained in the call narrative and investigation report.

You apparently are asserting the privacy interests of the purported victim, witnesses, and accused employee. As the requestor in this situation is the victim, you may not withhold from this requestor information that implicates her own privacy interests. An individual "has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).¹

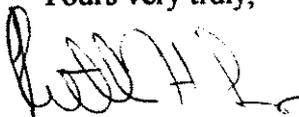
Pursuant to the court's decision in *Ellen*, we have deleted identifying information about witnesses to the alleged sexual harassment. Since there is a legitimate public interest in the identity of a public employee accused of sexual harassment in the workplace, we have not de-identified the call narrative and investigation report concerning the accused employee. We have also marked information that may be confidential pursuant to sections 552.024 and 552.117 of the Government Code.

Sections 552.024 and 552.117 provide that a public employee can opt to keep private the employee's home address, home telephone number, social security number, or information that reveals whether the individual has family members. You must withhold the marked information concerning family members if, as of the time of the request for the information, the employee had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987).

¹We note, however, that some of the information at issue, including identifying information about the victim, may not be disclosed to the general public.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is written in a cursive style with a large initial "R" and "S".

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 100063

Enclosures: Marked documents