



Office of the Attorney General

State of Texas

July 30, 1996

DAN MORALES
ATTORNEY GENERAL

Ms. Susan Bradshaw
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR96-1337

Dear Ms. Bradshaw:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40463.

The University of Texas System (the "University") received a request for information regarding sexual harassment complaints and investigations involving the requestor. You state that the University has made available to the requestor "a written statement of the allegations," which were initially made against him in September, 1995. However, you contend that "some of [the investigation file] contents are protected from disclosure pursuant to Section 552.101 and the Family Educational Rights and Privacy Act of 1974." We have considered the exceptions you claim and have reviewed the documents at issue.¹

Section 552.101 excepts from required public disclosure "information that is considered confidential by law, either constitutional, statutory, or by judicial decision," including the common-law doctrine to privacy. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

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 investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual

¹We note that included in the information submitted to this office was a copy of the University's policy regarding sexual harassment. We assume that a copy of this policy was provided to the requestor. *See* Gov't Code § 552.006.

accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Id.* 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 in this matter was sufficiently served by the disclosure of these documents. *Id.* at 525. 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.*

The *Ellen* decision controls the release of the documents you have submitted for our review. Attachments D, E, F, G, and H contain documents relating to the sexual harassment investigation, including interview forms and notes, complaints, investigation records, witness statements, and summary investigation reports. We believe there is a legitimate public interest in the substance of the complaints regarding the allegations of sexual harassment. However, in this instance there is an accurate summary of the alleged sexual harassment in Exhibit B, which has already been released to the requestor. Therefore, under the holding in *Ellen*, the University must withhold all remaining documents responsive to this request, specifically Attachments D, E, F, G, and H.²

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 should not be relied upon as a previous determination regarding any other records.³ If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, sweeping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 40463

Enclosures: Submitted documents

²To the extent that FERPA applies to the requested information, you indicate that you have withheld the confidential information; therefore, we need not address the application of FERPA to the submitted records. See 20 U.S.C. § 1232g(b)(1); Open Records Decision No. 634 (1995).

³In reaching our conclusion here, we assume that the "representative samples" of the records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.