



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 5, 1996

Mr. J. Robert Giddings  
Attorney  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, TX 78701-2981

OR96-2032

Dear Mr. Giddings:

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# 102226.

The University of Texas at Arlington ("UTA") received an open records request for, among other things, records pertaining to "allegations [against a particular UTA professor] of sexual harassment or lewd comments or behavior towards students or employees." You contend the requested records are excepted from required public disclosure as "education records," as defined in the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g(a)(4)(A). You also contend that portions of these records must be withheld from the public pursuant to common-law privacy, as incorporated into section 552.101 of the Government Code.<sup>1</sup>

In accordance with the procedure established by this office in Open Records Decision No. 634 (1995), you have submitted the records at issue to this office with the identities of all identifiable students redacted. As this office has previously noted, information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). As you have redacted all students' identities from the records at issue, these records are no longer deemed "education records" for purposes of FERPA. Accordingly, we conclude that none of the redacted records submitted to this office may be withheld on these grounds.

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

We next address your common-law privacy concerns.<sup>2</sup> 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 accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied)

The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment were exactly the kinds of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Ellen*, 840 S.W.2d at 525. However, the court ordered the release of the affidavit of the person under investigation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that, in that particular instance, "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Id.*

It is not clear to this office, however, whether or to what extent UTA has released details of the alleged sexual harassment to the public. Consequently, we have no basis for concluding that the department has sufficiently informed the public of the details of the allegations. In this instance, this office feels compelled to follow the *Ellen* decision with regard to victims' and witnesses' identities; accordingly, UTA must withhold information that tends to identify these individuals, including those faculty members who witnessed and reported the alleged conduct. However, 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 or the content of his statement and we decline to extend such protection here. We believe there is a legitimate public interest in the identity of public employees accused of sexual harassment in the workplace. *See, e.g.*, Open Records Decision Nos. 484 (1987), 400 (1983). Consequently, UTA must release all remaining information contained in the requested records because of the clear public interest in this information. *Cf.* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

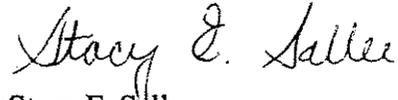
We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

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<sup>2</sup>Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, 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, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/RWP/ch

Ref.: ID# 102226

Enclosures: Submitted documents

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