



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1998

Mr. James David Cross
Compliance Officer
Houston Community College System
P.O. Box 7849
Houston, Texas 77270-7849

OR98-1535

Dear Mr. Cross:

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# 116202.

The Houston Community College System (the "system") received a request for all information relating to the requestor's resignation. You claim that some of the responsive information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law and constitutional rights to privacy. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The common-law right of privacy is incorporated into the Open Records Act by section 552.101. For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

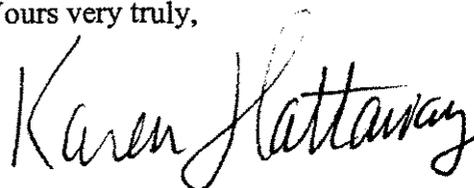
In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit 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 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.*

The submitted documents include information relating to a sexual harassment investigation. The document marked with a green flag contains an adequate summary of the investigation. The public has a legitimate interest in the investigation, and releasing the summary of the investigation will sufficiently serve the public interest. We have de-identified the summary as required by *Ellen*, and the system must release the de-identified summary to the requestor. The system must withhold all of the other documents relating to the sexual harassment from disclosure under section 552.101 in conjunction with the common-law right to privacy.

Finally, the submitted documents include personnel documents that do not appear to relate to the sexual harassment. The system must release these personnel documents to the requestor. We note, however, that if the system receives a similar request for information from a different requestor, the system should exercise caution in releasing these personnel documents. This is because some of the information that must be released to the requestor may be protected from disclosure to the general public. *See* Gov't Code § 552.023 (person has special right of access, beyond right of general public, to information that relates to person and is protected from disclosure by laws intended to protect person's privacy).

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. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 116202

Enclosures: Marked documents

cc: Mr. Amir Ali Sedghi
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(w/o enclosures)