



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 15, 1998

Mr. Helmut (Hal) Talton
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR98-2438

Dear Mr. Talton:

You ask that we reconsider Open Records Letter No. 98-1701 (1998). Your request was assigned ID# 118880.

Open Records Letter No. 98-1701, which concerned a request for all information regarding a particular sexual harassment complaint investigation, determined that the Texas Department of Transportation (the "department") may not withhold the information from the requestor based on section 552.101 in conjunction with the common-law right to privacy, sections 552.102, 552.107(1) or 552.111 of the Government Code. The ruling also determined that the department may withhold from disclosure information contained in the file that is covered by section 552.117 of the Government Code. You now state that it appears to you that, at the time of the issuance of Open Records Letter No. 98-1701, this office did not have a second set of representative samples the department submitted to this office for consideration. You now resubmit "all responsive documents" and reurge the exceptions previously raised.

Section 552.101 of the Government Code, which excepts from required public disclosure information considered to be confidential by law, applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You argue that the names and other information that identifies witnesses, the witness statements and synopses of the statements are protected from disclosure based on the common-law right to privacy.

The Texas Court of Appeals in *Morales v. Ellen* 840 S.W.2d 519 (Tex. App.-El Paso 1992, writ denied), found that, where information about a sexual harassment complaint investigation had been released to the public in summary form, the public does not possess

a legitimate interest in the names of witnesses of the sexual harassment, their statements, or any other information that would tend to identify them. You assert that two of the submitted documents, the Notice of Case Closure and the memo to the file pertaining to the Predetermination Conference, constitute a summary of the case for purposes of satisfying the legitimate public interest in the investigation. We believe that the memos concerning the corrective action taken must also be released to satisfy the legitimate public interest in the case. We note that, according to the Notice of Case Closure dated November 14, 1997, both parties to the investigation were told who was interviewed. However, we agree that the statements of witnesses are protected from disclosure based on the common-law right to privacy. *Morales v. Ellen* 840 S.W.2d 519 (Tex. App.-El Paso 1992, writ denied). We do not consider all of the individuals who made statements during the investigation to be witnesses for purposes of *Ellen*. We have marked the information accordingly.

You assert that section 552.107(1) of the Government Code exempts from disclosure a memorandum prepared by a department attorney. Section 552.107(1) applies to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). We have reviewed the memorandum at issue and conclude that it is excepted from disclosure based on section 552.107(1) of the Government Code.

Finally, among the submitted records, we have located information subject to protection from public disclosure under section 552.117(1) of the Government Code. Assuming the employee has complied with the provisions of section 552.024 of the Government Code, the department must withhold the information covered by section 552.117. We have marked the documents.

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

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/ch

Ref: ID# 118880

Enclosures: Marked documents