



September 9, 1999

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714

OR99-2512

Dear Mr. Bost:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127154.

The Department of Human Services received a request for a copy of a specific internal investigation. You seek to withhold portions of the requested information under section 552.101 of the Government Code.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. *Id.* at 683-85.

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. *Id.*

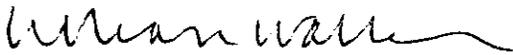
The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from

disclosure under the privacy doctrine as described in *Industrial Foundation*. *Id.* at 525. However, the court ordered the release of the affidavit of the person under investigation. 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.* at 525.

We have marked the portion of the submitted information which we believe may serve as a summary of the investigation. In order to comply with the *Ellen* ruling, you should release the summary and the April 9, 1999 statement of the person under investigation. Prior to release you should redact the identities of the victims and witnesses from the summary and the April 9 statement. The remaining portions of the submitted information pertaining to the sexual harassment investigation should be withheld in their entirety. We note, however, that some of the submitted material does not appear to relate to that investigation; since you have raised no other exceptions to disclosure, this information should be released.

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.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 127154

Encl. Submitted documents

cc: Ms. Leslie Logar
P.O. Box 151074
Austin, Texas 78715-2074
(w/o enclosures)