



November 6, 2000

Mr. Douglas Manning
Assistant County Attorney
County of Orange
801 Division
Orange, Texas 77630

OR2000-4328

Dear Mr. Manning:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141327.

The Orange County Attorney's Office, Personnel Department and Community Supervision and Corrections Department (the "county") received identical requests for various information related to several sexual harassment complaints filed by county employees. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You claim that a portion of the submitted information is confidential under common law privacy because it pertains to county employees' allegations of sexual harassment.

The court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). 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 conclusion, 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.* Based on *Ellen*, a governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information which would tend to identify a witness or victim.

Following *Ellen*, we conclude that release of the documents in Exhibit B entitled "Investigation of Sexual Harassment", "Findings on (complainant's) Grievance Dated 7-27-2000" and "Findings on (complainant's) Grievance Dated 8-7-2000" are analogous to the summary released in *Ellen*, and that release of this information, along with the statements of the individuals accused of harassment, which we believe are analogous to the affidavit of the accused in *Ellen*, satisfies the legitimate public interest in this matter. The portion of these summaries and statements which reveals the identities of witnesses and the female victim must be redacted.¹ For your convenience, we have identified with a blue tag the documents to be released, and have marked the information within these documents that must be redacted. The remainder of the information you have submitted must be withheld from disclosure under section 552.101 in conjunction with common law privacy.

We note that while the identity of a purported victim of sexual harassment must be withheld, the requestor here is both a victim in one allegation of harassment and the accused in another. A governmental body may not assert an individual's own privacy as a reason for withholding records from that individual. Open Records Decision Number 481 (1987); Gov't Code § 552.023. Therefore, information identifying the requestor, and information otherwise protected as infringing on the privacy rights of the requestor, but not on the rights of any other party, must be released to this requestor. If the department receives a subsequent request for this information from someone other than the requestor, it should submit another request for opinion to this office in regard to that request.

¹We are aware that the female victim of one alleged incident of sexual harassment is also the accused in two other allegations. Under *Ellen, supra*, the identity of the accused is not excepted from disclosure under common law privacy. However, in this case, the facts pertaining to the three allegations of harassment are so intertwined that we believe to reveal the female victim's identity as the accused would also reveal her identity as the victim, and thus, violate her privacy rights. Therefore, we find that her name must be redacted from the documents to be released even where it appears as the accused. *Cf.* Open Records Decision No. 393 (1983) (generally, only that information which either identifies or tends to identify victim of sexual assault or other sex-related offense may be withheld under common law privacy; because identifying information was inextricably intertwined with other releasable information, governmental body was required to withhold entire report).

To summarize, the county must withhold the submitted information, with the exception of the information in Exhibit B consisting of the statements of the two individuals accused of harassment, and the documents entitled "Investigation of Sexual Harassment," "Findings on (complainant's) Grievance Dated 7-27-2000" as well as "Findings on (complainant's) Grievance Dated 8-7-2000." The county must redact the identities of any witnesses and the female victim from these documents. Any information revealing the requestor as the victim of harassment may not be withheld from the requestor. As we resolve your request under section 552.101, we need not address your argument under section 552.107.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/pr

Ref: ID# 141327

Bcc: Mr. Jim Reid
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Mauriceville, Texas 77626