



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 14, 2003

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2003-3254

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 180998.

The Texas Department of Criminal Justice ("TDCJ") received two requests for the investigative files relating to a TDCJ/Equal Employment Opportunity complaint of sexual harassment. You assert the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides as follows:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, you state the submitted information is the investigative file of a completed sexual harassment investigation. Thus, the TDCJ must release the information, unless it is expressly confidential under other law or excepted from disclosure under section 552.108. As you claim mandatory exceptions under sections 552.101 and 552.117 of the Government Code, we will address your arguments under these provisions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the disclosure of the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

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. *Id.* 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.* When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure.

In this instance, we find the Fact Finding Memorandum dated September 20, 2002 constitutes an adequate summary of the investigation. Further, we believe the document dated September 9, 2002, which consists of questions presented to and answered by the subject of the sexual harassment investigation, constitutes the statement of the accused. Therefore, we conclude that under *Ellen*, the TDCJ must release only the Fact Finding Memorandum and the statement of the investigated person, with redactions of the identifying information of victims and witnesses; the TDCJ must withhold the remainder of the submitted information. The TDCJ may not withhold the names and other identifying information of supervisors. In Open Records Letter No. 2003-0671 (2003), this office previously withheld the name of a supervisor from the Fact Finding Memorandum. Upon reexamination, we determine the TDCJ must release this supervisor's identity, and we have marked this person's information for release in the Fact Finding Memorandum. Further, we

note the TDCJ has released the Fact Finding Memorandum to one requestor, as required by Open Records Letter No. 2003-0671. However, the TDCJ must provide this requestor with another copy of this document with the additional information we have marked for release. The other requestor specifically excludes this document from his request. With respect to the statement of the accused, we note one requestor, the alleged victim of sexual harassment, has a right of access to her identifying information. *See* Gov't Code § 552.023 (providing that a person has a special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests).

In summary, the TDCJ must release the statement of the accused to both requestors after redaction of the victims' and witnesses' identifying information. However, the TDCJ must release the identifying information of the requestor with a special right of access to her information under section 552.023 of the Government Code. The TDCJ must withhold the remainder of the sexual harassment investigative file under section 552.101 in conjunction with common-law privacy and *Ellen*.<sup>1</sup>

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,

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<sup>1</sup> As section 552.101 is dispositive, we need not address your other claimed exception.

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 Dep't of Pub. 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 Hadassah Schloss at the Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 180998

Enc: Submitted documents

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