



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2008

Ms. Patricia Fleming  
Texas Department of Criminal Justice  
Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2008-01390

Dear Ms. Fleming:

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# 300832.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for two witness statements related to a specified sexual harassment investigation. You state that you have released some of the requested information. You claim that the submitted 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.

Initially, we note that you have submitted information that is not responsive to the instant request for information. The requestor requests two specified witness statements. Therefore, any additional submitted information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request. As we are able to make this determination, we need not address your argument under section 552.107 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

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 information includes witness statements that are related to an investigation into a sexual harassment allegation. We note, however, that the requestor is the alleged victim in this instance. Section 552.023 of the Government Code gives a person a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. *See* Gov't Code § 552.023. Thus, the requestor has a special right of access to the information in her witness statement that would otherwise be confidential to protect her privacy interests, and the department may not withhold that information under section 552.101 in conjunction with common-law privacy.<sup>1</sup> *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the requestor's witness statement identifies another witness to the sexual harassment. The department must withhold from the requestor's statement the identifying information of this witness, which we have marked, under section 552.101 and the holding in *Ellen*. The department must also withhold the identifying information of the witness contained in the witness statement not belonging to the requestor, which we have marked, under section 552.101 and the holding in *Ellen*. The remaining information may not be withheld under section 552.101 on that basis.

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<sup>1</sup>We note, however, that if the department receives another request for this particular information from a different requestor, the department should again seek a decision from us before releasing this information.

The requestor's witness statement also contains information that is excepted under section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(3) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department or the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175. Thus, the department must withhold the information we have marked pursuant to section 552.117(a)(3).<sup>3</sup>

In summary, the department must withhold the information we have marked under section 552.101 and the holding in *Ellen* and the information we have marked under section 552.117(a)(3). The remaining responsive information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>Open Records Letter No. 2005-01067 authorizes the Texas Department of Criminal Justice (the "department") to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department under section 552.117(a)(3) of the Government Code without the necessity of requesting an attorney general decision with regard to the applicability of that exception. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

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 challenge 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 Office of the Attorney General 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,



Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 300832

Enc: Submitted documents