ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2010

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2010-10532

Dear Ms. McGowan:

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# 386608.

The Dallas Independent School District (the "district") received a request for statements from employees who witnessed a specified altercation. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You claim the submitted documents includes information made confidential by section 261.201 of the Family Code, which provides as follows:

> (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:
>
> > (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

> (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the submitted information is confidential under section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). However, you state the district has an employee on staff who is shared with the Texas Department of Family and Protective Services ("DFPS") to receive and investigate child abuse claims. Although you state the information at issue was obtained by the Dallas Police Department, DFPS, or district police officers, we note the information at issue pertains to an investigation of sexual harassment between two district employees. The information does not pertain to an investigation of child abuse. *See id.* § 261.001(1). Thus, you have failed to demonstrate the applicability of section 261.201 to the submitted information. Consequently, the district may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 261.201.

Section 552.101 of the Government Code also 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. 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 the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held "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.* Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, along with the statement of the accused. However, the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). However, when no adequate summary exists, detailed statements

regarding the allegations must be released, but the identities of victims and witnesses must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978). We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

As noted above, the submitted information relates to an investigation into an alleged sexual harassment. Upon review, we determine the submitted information contains an adequate summary of the alleged sexual harassment, as well as statements of the accused. The summary and statements are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statements identifying victims and witnesses must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*, the district must withhold the identifying information of the victims and witnesses, which we have marked, within the adequate summary and statements. Because there is an adequate summary, the district must also withhold the remaining information in the sexual harassment investigation under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

You also raise section 552.135 of the Government Code for portions of the remaining information. Section 552.135 provides the following:

> (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
>
> (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
>
> (c) Subsection (b) does not apply:
>
> > (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
> >
> > (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

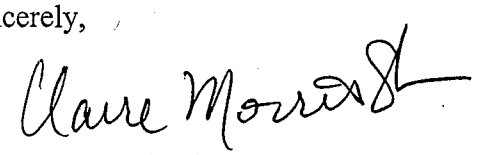
Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Section 552.135 protects only the names of the informers who initially reported the violations of law, and not the identities of witnesses to the violations. You state the remaining information contains the statements and reports of employees and students of the district concerning the accused employee's possible violation of criminal and civil laws. Upon review, we find the district has failed to demonstrate how the remaining information reveals the identify of an informer for section 552.135 purposes. Accordingly, none of the remaining information may be withheld on this basis.

In summary, the district must withhold (1) the identifying information of the victims and witnesses, which we have marked, within the adequate summary and statements, and (2) the remaining information in the sexual harassment investigation under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/jb

Ref: ID# 386608

Enc. Submitted documents

c: Requestor
(w/o enclosures)