



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2011

Ms. Neera Chatterjee
Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2011-01461

Dear Ms. Chatterjee and Ms. Angadicheril:

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# 407362 (OGC# 134176).

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for the university's sexual harassment and sexual harassment complaint policies; all investigations of the sexual harassment complaints against a named individual, the requestor's client; all sexual harassment complaints against the individual; all internal notes, communications, reports, documents, and e-mails regarding sexual harassment complaints against and termination of the individual; all written reprimands, disciplinary action, or similar documents by the individual concerning three named university employees; and the individual's personnel file, including all documents relating to his termination. You state that the university will redact information under section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.¹ You state the university has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹See Gov't Code § 552.117, .024(c)(2) (if employee or official or former employee or official elects not to allow public access to his or her personal information, governmental body may redact information without necessity of requesting decision from this office).

Initially, we note the submitted information consists of a completed sexual harassment investigation conducted by the university and is subject to section 552.022 of the Government Code, which states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the 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). Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you claim this information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code, we note that these sections are discretionary exceptions under the Act that do not constitute "other law" for purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the university may not withhold the submitted information under section 552.103 or section 552.107 of the Government Code. However, we note that the Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. See *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertions of the attorney-client privilege under rule 503 of the Texas Rules of Evidence. You also raise section 552.101 of the Government Code for the submitted information. Section 552.101 is "other law" for the purposes of section 552.022. Accordingly, we will also consider your arguments under that section.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

This office has found that the public has a legitimate interest in the qualifications and work conduct of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow).

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 in an employment context. 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.*

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, but 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). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. We note that since common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance, 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).

The submitted information pertains to a sexual harassment investigation that is subject to the ruling in *Ellen*. Upon review, we conclude the submitted information includes an adequate summary of the investigation. The summary, along with the statement of the accused, which we have marked, are not confidential under section 552.101 in conjunction with common-law privacy. However, information within the summary and the statement that identifies the alleged victims and witnesses is confidential under common-law privacy and must be withheld pursuant to section 552.101 of the Government Code. *See Ellen*, 840 S.W.2d at 525. Thus, the university must release the adequate summary and the statement of the accused, but withhold the information that we have marked within the summary and the statement under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*. The university must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy and the

court's holding in *Ellen*. As our ruling is dispositive, we do not address your remaining arguments against disclosure.²

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 407362

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the statement of the accused contains information to which the requestor, as this individual's attorney, has a special right of access. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). If the university receives another request for this information from an individual other than one with a right of access under section 552.023, the university should seek another decision from this office.