



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2011

Mr. Carey Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2011-02006

Dear Mr. Smith:

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# 408529.

The Texas Health and Human Services Commission (the "commission") received a request for information relating to a specified complaint. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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. This exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied common-law privacy to records of an investigation of alleged sexual harassment in the workplace. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court also held, however, that "the public does 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*, but the identities of the victim of and witnesses to the alleged sexual harassment must be redacted, and their detailed statements must be withheld. *See also* 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 must ordinarily be released, except for information that would identify the victim and witnesses. In either event, the identity of the individual accused of sexual harassment is not protected from public disclosure. 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. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

We find *Morales v. Ellen* is applicable to the submitted information, which consists of records of an investigation of alleged sexual harassment. We also find the submitted information includes an adequate summary of the investigation and statements by the person accused of sexual harassment. We note the summary and statements reveal the identities of the alleged victim of sexual harassment and the witnesses in the investigation. In this instance, the requestor was the alleged victim. As such, the requestor has a special right of access under section 552.023 of the Government Code to her own identifying information in the documents to be released. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).¹ Therefore, the commission must release the investigation summary and the statements of the accused person, which we have marked, except for the information in those documents that identifies the witnesses in the investigation. The commission must withhold the information that identifies the witnesses, which we have marked, and the rest of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the decision in *Ellen*.²

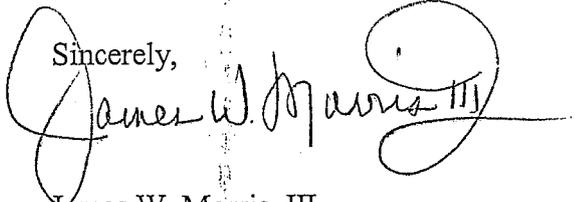
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

²We note this requestor has a right of access to information the commission would be required to withhold from the general public. Should the commission receive another request for this same information from a different requestor, the commission should resubmit this information and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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,

A handwritten signature in cursive script that reads "James W. Morris, III". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 408529

Enc: Submitted documents

c: Requestor
(w/o enclosures)