



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2011

Ms. Charlotte A. Towe  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2011-05870

Dear Ms. Towe:

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# 415914.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a complaint filed by the requestor, which resulted in three EEO investigations. You state the department has released or will release some of the requested information, but claim 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information that (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.

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 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*, 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). However, 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).

The submitted information pertains to three sexual harassment investigations: EEO# 10002904, and its two "sister" investigations, EEO# 10004724 and 10004725. The submitted information contains adequate summaries of these three investigations, as well as statements by the persons who were accused of sexual harassment. The summaries and statements are, thus, not confidential in their entirety under common-law privacy; however, information within these documents identifying witnesses, which we have marked, is confidential under common-law privacy and the department must this marked information pursuant to section 552.101 of the Government Code. See *Ellen*, 840 S.W.2d at 525. We note the requestor, who is the victim of the alleged sexual harassment, has a special right of access to her own identifying information in the summaries and statements of the accused. See Gov't Code § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning herself). The department must withhold the remaining information in the investigation files, which we have marked, under section 552.101 in conjunction with common-law privacy.<sup>1</sup> See *id.*

Section 552.117 of the Government Code may be applicable to some of the information in the summaries and statements of the accused.<sup>2</sup> Section 552.117(a)(3) of the Government

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<sup>1</sup>As we are able to resolve this matter under section 552.101, we do not address your other argument for exception of this information.

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see e.g., Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

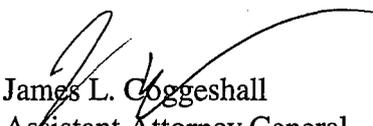
Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former department employees "regardless of whether the current or former employee complies with Section 552.1175." Gov't Code § 552.117(a)(3). Accordingly, the department must withhold the information we have marked under section 552.117(a)(3).<sup>3</sup>

To conclude, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked under section 552.117(a)(3) of the Government Code. The department must release the remaining information.<sup>4</sup>

Finally, although you request a previous determination "authorizing the [department] to redact the names of the complainant and witnesses in EEO investigations alleging sexual harassment pursuant to section 552.10[,]" we decline to issue one at this time. Accordingly, 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 more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

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<sup>3</sup>Open Records Letter No. 2005-01067 (2005) serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

<sup>4</sup>Because, as noted above, the requestor has a right of access to some of the information being released pursuant to section 552.023, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

Ref: ID# 415914

Enc. Submitted documents

c: Requestor  
(w/o enclosures)