



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 14, 2011

Ms. Laura Russell
Attorney
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2011-10058

Dear Ms. Russell:

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# 425292.

The Texas Parks & Wildlife Department (the "department") received a request for information concerning all cases involving an investigation of an allegation of sexual harassment or discrimination for the last two years in which two named department employees participated. You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, which you state is a representative sample of the records contained in the responsive investigative case files.¹

Section 552.101 excepts from required public disclosure information that is made confidential by law. Gov't Code § 552.101. Section 552.101 incorporates the common law right of privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). For information to be protected by common law privacy, it must meet the criteria set out in

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Industrial Foundation. The *Industrial Foundation* court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

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 consists of adequate summaries of the investigations into alleged sexual harassment. Therefore, you must withhold the documents in the investigation files and release the summaries pursuant to *Ellen*, 840 S.W.2d at 525. However, the identities of the victims and witnesses to the alleged sexual harassment are protected by the common law privacy doctrine and must be withheld from the summaries. *Id.* In addition, the public interest in the statement and the identity of the alleged harasser outweighs any privacy interest the alleged harasser may have in that information; therefore, the department may not withhold this information under section 552.101. Furthermore, the public has no legitimate interest in the details of the victims' and witnesses' personal statements, and they may not be disclosed. *Id.*

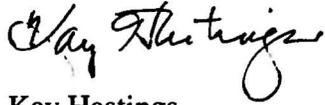
We have marked the information in the submitted summaries that the department must withhold based on section 552.101 and the common law right to privacy. The department must release the remaining information in the summaries to the requestor. The department must withhold the remaining documents in the investigation files based on section 552.101 and the common law right to privacy, except for the alleged harassers' statements, which are public to the extent they do not reveal the identity of a sexual harassment victim or witness.

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,

A handwritten signature in black ink, appearing to read "Kay Hastings". The signature is written in a cursive style with a large initial "K".

Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 425292

Enc. Submitted documents

c: Requestor
(w/o enclosures)