



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2011

Ms. Elisabeth Donley Nelson  
For Garland Independent School District  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2011-17664

Dear Ms. Nelson:

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# 437624.

The Garland Independent School District (the "district"), which you represent, received a request for (1) the personnel file of the requestor's client from August 1, 2008 through September 14, 2011; (2) all information regarding the investigation of the requestor's client during his employment with the district; (3) all complaints made against the requestor's client during his employment with the district; (4) all information pertaining to allegations of unprofessional conduct or performance deficiencies made against the requestor's client during his employment with the district; (5) all information pertaining to the requestor's client's resignation from employment with the district; and (6) all communications amongst district administrators relating to the requestor's client's resignation. You state portions of the requested information have or will be released to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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* include 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. We note the submitted information consists of an investigation of alleged sexual harassment. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of common-law privacy to information relating to an investigation of alleged 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. See *Ellen*, 840 S.W.2d 519 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.* 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 sexual harassment, the summary must be released along with the statement of the person accused of sexual harassment, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. If no adequate summary of the investigation exists, then detailed statements regarding the allegations must be released, but the identities of victims and witnesses must be redacted from the statements. In either event, the identity of the individual accused of sexual harassment is not protected from public disclosure. We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

The submitted information consists of a sexual harassment investigation. In this instance, the submitted documents include a summary of the investigation. We note the summary reveals the identity of the alleged victim of sexual harassment and the witnesses in the investigation. Therefore, the summary is not confidential under common-law privacy. However, the district must withhold the identifying information of the victim and witnesses in the summary, which you have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and the decision in *Ellen*. The district must release the remaining portions of the summary. The district must withhold 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*.<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

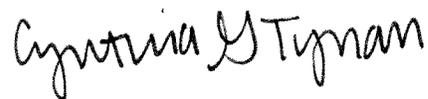
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023. Because such information is confidential with respect to the general public, if the district receives another request for this information from a different requestor, then the district should again seek a ruling from this office.

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 437624

Enc. Submitted documents

c: Requestor  
(w/o enclosures)