



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2016

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

OR2016-22385

Dear Ms. Cater:

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# 629352.

The Texas Parks & Wildlife Department (the "department") received a request for all records related to a specified investigation of a former employee. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. 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 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 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 alleged sexual harassment, the investigation summary must be released under *Ellen*, along with the statement of the accused. However, 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).

We find *Ellen* is applicable to the submitted information, which consists of an internal affairs investigation regarding an allegation of sexual harassment. Upon review, we determine Exhibit B constitutes an adequate summary of the alleged sexual harassment. The summary is not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary identifying victims and witnesses must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. See *Ellen*, 840 S.W.2d at 525. Therefore, with the exception of information we have marked for release, the department must withhold the identifying information of the victims and witnesses you have marked, as well as the additional information we marked, within Exhibit B under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*. Furthermore, because there is an adequate summary, the department must withhold the remaining information in the sexual harassment investigation, Exhibit C, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. However, upon review, we find the remaining information in Exhibit B does not identify a victim or witness to the investigation. Therefore, none of the remaining information in Exhibit B may be withheld under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. As no other exceptions against disclosure are raised, the remaining information must be released.

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.texasattorneygeneral.gov/open/>

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 629352

Enc. Submitted documents

c: Requestor
(w/o enclosures)