



April 25, 2000

Ms. Margaret Roll  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2000-1608

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134420.

The Texas Department of Human Services (the “department”) received a request for the complete records regarding a specific complaint of sexual harassment. You claim that most 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 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.” Section 552.101 encompasses information considered confidential under the common law right to privacy. Information is protected by the common law right to privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

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 regarding 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.*

According to *Ellen*, the public has a legitimate interest in documents that adequately summarize sexual harassment allegations and the results of investigations into those allegations, but not in the identities or detailed statements of the victim and witnesses. *See id; see also* Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). You explain that the department intends to release a redacted version of the “Report of Investigation” to the requestor. This report contains a summary of the allegations, the investigation, and the findings. We find that release of the “Report of Investigation” is sufficient to serve the public interest in this matter. Therefore, according to *Ellen* as well as common law privacy, as encompassed by section 552.101, the department must release the “Report of Investigation,” subject to confidential information discussed below, and withhold the remainder of the submitted information.

Although the department must release the “Report of Investigation,” section 552.101 in conjunction with *Ellen* requires the city to withhold the witnesses’ and the victim’s identifying information. We note that we generally do not consider supervisors of the accused or of the complainant in a sexual harassment case to be witnesses to the sexual harassment. Accordingly, the names of supervisors in the “Report of Investigation” must be withheld only where release of the names would reveal the identity of the victim or witnesses, or where the names appear in a non-supervisory context. We have marked the types of information in the submitted report that must be withheld under section 552.101.<sup>1</sup>

In conclusion, pursuant to *Ellen* and common law privacy, as encompassed by section 552.101, the department must release the “Report of Investigation” subject to the noted redactions, and the department must withhold the remainder of the submitted information.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

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<sup>1</sup>We note that the “Report of Investigation” submitted to this office contains your markings indicating information that you had intended to redact. Although we have not erased your markings, the department must release the “Report of Investigation” in accordance with our markings only.

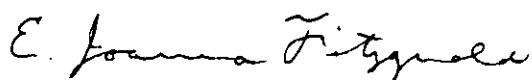
full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 134420

Encl: Submitted documents

cc: Mr. Juan Manuel Romo  
2424 Tamarack  
McAllen, Texas 78501  
(w/o enclosures)