



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2017

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701

OR2017-18426

Dear Ms. Tynan:

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# 672038 (OGC# 175923).

The University of Texas at San Antonio (the "university") received a request for information pertaining to complaints filed against the university's police department during a specified time period.<sup>1</sup> You state the university will release some information to the requestor. You indicate the university will redact information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>2</sup> You claim

---

<sup>1</sup>You state the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

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 from disclosure "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 (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 (Tex. 1976). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

Furthermore, 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 "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, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. We note that, because 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, the identity of the individual accused of sexual harassment is not protected from public disclosure. See Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978). We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

Upon review, we agree the information you marked pertains to sexual harassment investigations subject to the ruling in *Ellen*. We further find the information at issue includes adequate summaries of the investigations, as well as statements by the individuals accused of sexual harassment. Thus, with the exception of the summaries and statements of the accused, the university must withhold the remaining information at issue, which you have

marked, under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. The summaries and statements of the accused are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statement 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, the university must withhold the identifying information of the victims and witnesses you marked within the adequate summaries and statements of the accused pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.<sup>3</sup> Furthermore, we find the remaining information you marked within the adequate summaries and statements of the accused meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the remaining information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”<sup>4</sup> Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the university must withhold the dates of birth we marked under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 51.971 of the Education Code. Section 51.971 of the Education Code provides, in relevant part, the following:

(a) In this section:

(1) “Compliance program” means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

...

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(a), (c)(1), (d)-(e)(1). You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You also state some of the remaining information relates to completed compliance investigations of allegations of misconduct involving employees of the university's police department (the "department"). You further state the investigations at issue pertain to matters involving ethical questions and standards of conduct of department employees. You inform us the department initiated an internal affairs investigation for each complaint at issue to assess and ultimately ensure the university complies with all applicable laws, rules, regulations and policies. Thus, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971 of the Education Code. *See id.* § 51.971(a).

You claim portions of the information at issue are subject to section 51.971(c). Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You state the investigations at issue concluded in determinations that the allegations at issue were substantiated. Upon review, we find the information you marked identifies individuals seeking guidance from or participating in compliance program investigations. You state these individuals have not consented to release of their information. Accordingly, we find the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.

You state the remaining information pertains to open, ongoing internal affairs investigations conducted by the department that concern allegations of misconduct against department employees. You explain the information at issue was collected or produced during the course of the investigations, and disclosure of this information would interfere with the investigations. Upon review, we find release of the information at issue would interfere with the ongoing compliance investigations. Accordingly, we conclude the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

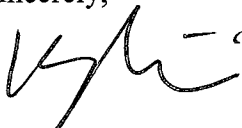
In summary, with the exception of the summaries and statement of the accused, which must be released, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. In releasing the summaries and statement of the accused, the university must withhold the identifying information of the victims and witnesses you marked pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*, and the remaining information you marked under section 552.101 in conjunction with common-law privacy. The university must withhold the dates of birth we marked under section 552.102(a) of the Government Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code. The university must release the remaining information.

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 672038

Enc. Submitted documents

c: Requestor  
(w/o enclosures)