



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 18, 2017

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2901

OR2017-28638

Dear Ms. Burnett:

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# 688405 (OGC#s 177460 & 177754).

The University of Texas Rio Grande Valley (the "university") received two requests from the same requestor for all information pertaining to a certain investigation, including a specified document. You inform us the university has released some information. You claim some of 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). 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 submitted information pertains to a sexual harassment investigation subject to the ruling in *Ellen*. We further find the information at issue includes an adequate summary of the investigation. Thus, with the exception of the summary, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*.¹ The summary is not confidential under section 552.101 in conjunction with common-law privacy; however, a governmental body must withhold information within the adequate summary identifying victims and witnesses under section 552.101 in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*, the university must withhold the victim's identifying information we have marked within the summary.² Upon review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Consequently, the

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

university may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 51.971 of the Education Code. Section 51.971 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;

(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[.]

...

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

Educ. Code § 51.971(a), (c)(1), (d). You state the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). The information at issue pertains to a completed investigation of an allegation of sexual

harassment. You also state this investigation was conducted by the university's Office of Institutional Equity. You inform us the university conducts an internal process of review to assess sexual harassment complaints to ultimately ensure that its employees complied with all applicable law, rules, regulations and policies relating to sexual harassment. Thus, we agree the information at issue pertains to the university's compliance program for the purposes of section 51.971. *See id.* § 51.971(a).

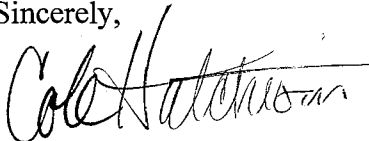
You seek to withhold portions of the remaining information under section 51.971(c)(1) of the Education Code. You assert release of this information would identify the complainant and individuals who participated in the compliance program investigation. However, we find the remaining information does not identify any individual who made a report, sought guidance, or participated in the investigation at issue. Accordingly, the university may not withhold the remaining information under section 552.101 in conjunction with section 51.971(c)(1).

In summary, with the exception of the adequate summary, which must be released, the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. In releasing the adequate summary, the university must withhold the victim's identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*.

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, appearing to read "Cole Hutchison". The signature is written in a cursive style with a horizontal line extending from the end.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 688405

Enc. Submitted documents

c: Requestor
(w/o enclosures)