



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 6, 2018

Ms. Dolina "Dolly" Garcia  
Associate General Counsel  
University of North Texas  
1155 Union Circle #310907  
Denton, Texas 76203-5017

OR2018-02621

Dear Ms. Garcia:

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# 694241 (Public Information Request No. 002127).

The University of North Texas Health Science Center (the "center") received a request for all information regarding a specified incident report. You state you will release some information. You claim portions 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 representative sample of information.<sup>1</sup>

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 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

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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.

You seek to withhold portions of the submitted information under common-law privacy and the ruling in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. We note the ruling in *Ellen* was applicable to investigations involving sexual harassment in the workplace. Upon review, we find the information at issue does not constitute a sexual harassment investigation in the employment context of the center for purposes of *Ellen*. Accordingly, we conclude the ruling in *Ellen* is not applicable in this situation, and the center may not withhold the information at issue under section 552.101 of the Government Code on that basis. Further, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the center may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>2</sup> *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be the type specifically excluded by subsection (c). Upon review, we find the center must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The center must release the remaining information.<sup>3</sup>

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>2</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note the requestor has a right of access to some of the information being released in this instance that is confidential with respect to the general public. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party’s representative, solely on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because such information is confidential with respect to the general public, if the center receives another request for this information from a different requestor, then the center 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/tdw

Ref: ID# 694241

Enc. Submitted documents

c: Requestor  
(w/o enclosures)