



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2019

Mr. Mark Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2019-34386

Dear Mr. Kratovil:

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# 800829.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for information related to a specified case. The district attorney's office claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the district attorney's office claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public 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 demonstrated. *See id.* at 681-82.

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 the *Ellen* decision 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 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*, 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). However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of victims and witnesses must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

The submitted information relates to an investigation into an alleged sexual harassment. Upon review, we find the submitted information contains an adequate summary of the investigation of alleged sexual harassment, which we marked. The submitted information also contains the statement of the accused, which the district attorney's office marked. The summary and statement of the accused are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statement that identifies 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, pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*, the district attorney's office must withhold the identifying information of the victims and witnesses, which we marked, within the summary and the statement of the accused. Upon review, we also find some of the remaining information in the adequate summary, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district attorney's office must also withhold the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Because there is an adequate summary, the district attorney's office must also withhold the submitted information not consisting of the adequate summary we marked and the statement of the accused under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*.

Some of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the

¹ 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).

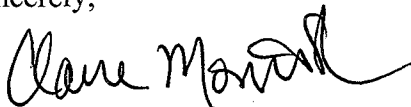
Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the district attorney's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the district attorney's office must withhold the identifying information of the victims and witnesses, which we marked, within the summary and the statement of the accused pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. Further, the district attorney's office must withhold the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must also withhold the remaining submitted information, not consisting of the adequate summary we marked and the statement of the accused, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. The district attorney's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The district attorney's office must release the remaining information to this requestor.²

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

² We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground 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). Thus, if the district attorney's office receives another request for the same information from a different requestor, the district attorney's office must again seek a decision from this office.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)