



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2020

Mr. Matthew Entsminger
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2020-04622

Dear Mr. Entsminger:

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# 811662.

The Travis County Healthcare District d/b/a Central Health (the "district") received a request for certain records pertaining to the requestor's client. You claim 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 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.

The submitted information relates to an investigation into conduct rising to the level of sexual harassment. Upon review, we determine the submitted information does not contain an adequate summary of the alleged sexual harassment. Because there is no adequate summary of the investigation, the district must generally release any information pertaining to the sexual harassment investigation. However, the information at issue contains the identity of the victim of the alleged sexual harassment. Accordingly, the district must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. *See Ellen*, 840 S.W.2d at 525. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The district 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 <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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 811662

Enc. Submitted documents

c: Requestor
(w/o enclosures)