



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 15, 2020

Ms. Clara H. Saafir  
Assistant District Attorney  
The County of Dallas  
411 Elm Street, 5th Floor  
Dallas, Texas 75202-3317

OR2020-31378

Dear Ms. Saafir:

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# 858378 (Ref. No. 00614).

The County of Dallas (the "county") received a request for information regarding any investigation involving a specified complaint. You state the county will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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 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. 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 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).

In this instance, the submitted information pertains to a sexual harassment investigation and, thus, is subject to the ruling in *Ellen*. Upon review, we find the information at issue includes an adequate summary of the investigation. We note the summary is not confidential under section 552.101 in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Thus, with the exception of the adequate summary, which we marked, the county must withhold the submitted information under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. We note, however, information within the summary that identifies the victim and witnesses is generally confidential under common-law privacy. *See id.* In this case, the requestor's client is the alleged sexual harassment victim, and has a right of access to her client's private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protection that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the identifying information of the victim may not be withheld from the requestor under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the adequate summary, which must be released, the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy and the ruling in *Ellen*.<sup>1</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>1</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the county receives another request for the same information from a different requestor, the county must again seek a decision 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 <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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/be

Ref: ID# 858378

Enc. Submitted documents

c: Requestor  
(w/o enclosures)