



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 25, 1996

Ms. Amy Castaneda  
Assistant General Counsel  
University of Houston System  
Office of University Counsel  
1600 Smith, Suite 3400  
Houston, Texas 77002

OR96-1014

Dear Ms. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40144.

The University of Houston (the "university") received a request for all depositions taken as part of former assistant football coach Steve Staggs' lawsuit against the university and all reports, including attachments and related documents, prepared by the university as a result of allegations of wrongdoing made by Steve Staggs. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code.<sup>1</sup>

---

<sup>1</sup>In several letters to this office, you state your belief that the request was made "in such broad terms" that you were unsure as to whether certain documents were encompassed by the request. We note that numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the university must make a good-faith effort to relate the request to information in the university's possession and must help the requestor to clarify his request by

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The university has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); *Open Records Decision No. 551* (1990) at 4. The university must meet both prongs of this test for information to be excepted under section 552.103(a).

The university has established that litigation is pending and that the excerpts from the deposition transcripts are related to that pending litigation. However, when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). *Open Records Decision Nos. 349* (1982), *320* (1982). As the deposition excerpts have been seen by the opposing party, the university may not withhold the deposition excerpts under section 552.103(a).

You have submitted one other document as representative of your claimed exceptions under sections 552.103 and 552.107 of the Government Code. You claim that these notes were taken by a university attorney "during a meeting with two individuals named as defendants in a suit brought by Mr. Steven Staggs." Taking the documents together, we conclude that the university has met its burden under section 552.103(a) as to this document and may withhold it from required public disclosure.<sup>2</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; *Open Records Decision No. 611* (1992) at 1. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental

---

advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b)); *see also* *Open Records Decision No. 561* (1990) at 8.

<sup>2</sup>As we conclude that the university may withhold this document under section 552.103, we need not now address your claimed exception under section 552.107.

or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.101 also excepts information that is confidential under constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the deposition excerpts submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy. The university may not withhold the remainder of the deposition transcripts.<sup>3</sup>

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office as responsive to the second part of the request is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499

---

<sup>3</sup>You claim that some of the information requested is protected from disclosure by the decision 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. 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. 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 that "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.* However, this ruling applies to only to sexual harassment allegations and does not except any of the requested information from disclosure.

(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 that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 40144

Enclosures: Marked documents

cc: Mr. Danny Roberts  
Chronicle Sports  
The Houston Chronicle  
801 Texas  
Houston, Texas 77002  
(w/o enclosures)