



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 11, 1997

Mr. Christopher V. Bacon
Feldman & Rogers, L.L.P.
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR97-0776

Dear Mr. Bacon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105274.

The Housing Authority of the City of Houston (the "housing authority"), which you represent, received a request for a former employee's personnel and investigation files. You inform us that you have released the personnel file; however, you assert that the documents pertaining to an investigation of sexual harassment allegations are exempt from public disclosure pursuant to sections 552.101, 552.103,¹ and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you contend that notes taken by the housing authority's outside counsel are protected by the attorney-client and work-product privileges pursuant to section 552.101. However, as you have not submitted this information for our review, we cannot make a ruling with regards to these notes.

Second, you argue that section 552.111 excepts the January 16, 1997 memorandum from public disclosure. Section 552.111 excepts "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations,

¹As you have not presented any arguments regarding the applicability of section 552.103 or indicated how the exception applies to the submitted information, we deem the exception waived and will not consider the applicability of section 552.103. See Gov't Code § 552.301(b).

opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. Because the interoffice memorandum relates to personnel matters, section 552.111 does not except it from required public disclosure.

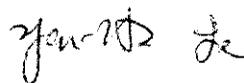
Lastly, you assert that all of the documents in the sexual harassment investigation file are excepted from disclosure pursuant to common-law privacy as incorporated by section 552.101 and recognized by *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, write denied).

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. *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 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.*

A review of the submitted documents shows that they do not contain an adequate summary of the sexual harassment investigation. Therefore, the documents must be released with the identities of victims and witnesses redacted. We have marked the types of identifying information that you must withhold.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

Ref.: ID# 105274

Enclosures: Marked documents

cc: Mr. Lonny J. Hoffman
Schlanger, Mills, Myer & Grossberg, L.L.P.
5847 San Felipe, Suite 1700
Houston, Texas 77057
(w/o enclosures)

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