



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 17, 1997

Mr. Robert A. Schulman
Schulman, Walheim & Heidelberg, Inc.
112 East Pecan, Suite 3000
San Antonio, Texas 78205

OR97-2309

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109598.

The Alamo Community College District (the "district"), which you represent, received a request for nine categories of information concerning 1) the relationship between the district and the Alamo Workforce Development, Inc., 2) certain job descriptions and resolutions, 3) complaint and investigation policies and procedures, 4) incident reports, and 5) documents relating to a complaint made by a particular person. You submit documents responsive to the request for incident reports and the specified complaint only; therefore, we assume that you have released the remainder of the requested information to the requestor. You assert that the incident reports are excepted from disclosure by section 552.108 of the Government Code, and that the information in the Human Resources Department's and Ombudsman's files is protected by common-law privacy under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the

publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101).

You assert that the information in the Human Resources Department's and Ombudsman's files is 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.*

Here, the files contain an adequate summary of the investigation into alleged sexual harassment. However, because the victim's identity is known and specifically referred to, no amount of redaction would adequately protect the victim's privacy. Therefore, you must withhold the information in the Human Resources Department's and Ombudsman's files pursuant to section 552.101.

Next, we address your contention that section 552.108 excepts the incident reports from public disclosure. Effective September 1, 1997, the Seventy-fifth Legislature amended section 552.108 of the Government Code to except from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to

an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

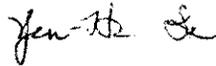
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

We have reviewed your section 552.108 arguments and conclude that you have not shown how release of the incident reports interferes with the detection, investigation, or prosecution of crime. Because you also have not shown how section 552.108 applies to except the incident reports, you must release them.

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

YHL/rho

Ref.: ID# 109598

Enclosures: Submitted documents

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(w/o enclosures)