



January 12, 2000

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2000-0126

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#131042.

The Texas Department of Mental Health and Mental Retardation ("MHMR") received a request for all documentation related to a specific sexual harassment investigation. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You state that you have released a copy of the memorandum from James E. Smith, Superintendent, North Texas State Hospital which contains the resolution of the complaint. However, you argue that Exhibits A through E are protected by common law privacy. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 incorporates the common law right of privacy which 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 must 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 at 1 (1992). Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common-law privacy 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.*

When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, we believe that when no adequate summary exists, detailed statements regarding allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. After careful review of the documentation you have submitted, we have determined that the "Summary of the Complaint" marked as Exhibit B, serves as an adequate summary of the investigation and it must be released. However, prior to release of Exhibit B, MHMR must redact identifying witness information.¹ Therefore, Exhibits A, C and E must be withheld under section 552.101.

You also seek to withhold portions of the accused's statement under common law privacy. We agree that some of the information you wish to withhold is highly intimate and is of no legitimate public interest. However, the remaining information must be released. We have marked the information in Exhibit D that is protected by section 552.101.

Finally, we note that the submitted documents contain family member information which may be protected under section 552.117. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. If these employees elected to withhold family member information under section 552.024, MHMR must redact that information from the documents prior to release.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

¹Here, the requestor has a special right of access to information that relates to herself. Gov't Code § 552.023. We caution, however, that some of the information may be confidential by law or may implicate the privacy interest of a third party. Therefore, if MHMR receives a request in the future, MHMR should seek a ruling from this office and reassert its privacy exception before releasing any of the requested information. See Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguia
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 131042

Encl. Submitted documents

bcc: Ms. Catherine Samples
North Texas State Hospital
P.O. Box 300
Wichita Falls, Texas 76307
(w/o enclosures)