



July 5, 2000

Mr. Joe De Los Santos  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2000-2521

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136735.

The Northside Independent School District (the "district"), which you represent, received a request for "a copy of all letters written" regarding a complaint filed against the requestor. You indicate that you have released to the requestor some of the responsive information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

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 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 at 1 (1992).

The common law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his or her performance. *See* Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). You have not demonstrated that the information relates to an investigation of a sexual harassment complaint. Witness statements in sexual harassment investigations may be protected from disclosure, but only when no adequate summary of the investigation exists. *See Ellen v. Morales*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). Thus, we have marked the limited amount of information which must be withheld from disclosure under section 552.101 in conjunction with the common law right to privacy.

You also contend that section 552.131(b) of the Government Code excepts the employees' identities contained in the submitted information as these employees are informers within the meaning of section 552.131. Section 552.131 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131.<sup>1</sup> Because the legislature limited the protection of section 552.131 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the

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<sup>1</sup>As of September 1, 1999, there were four sections of chapter 552 of the Government Code denominated as section 552.131. The quoted section 552.131 was added by the Act of May 30, 1999, 76<sup>th</sup> Leg., R.S., ch. 1335, § 6, 1999 Tex. Sess. Law Serv. 4543, 4545 (Vernon) (codified at Gov't Code § 552.131).

specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You indicate that some "employees alleged unfair treatment and discrimination in violation of District Policy and Title VII of the Civil Rights Act." We agree that the district may withhold from disclosure the identities of the employees who have alleged Title VII violations, unless the informer consents to the release. You inform us that the informers have not consented to the release of their identifying information. For your convenience, we have marked the information which must be withheld. You must release the remaining information to the requestor.

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 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,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/ljp

Ref: ID# 136735

Encl. Marked documents

cc: Ms. Beverly Schreibe  
3011 Meadow Flower Street  
San Antonio, Texas 78251  
(w/o enclosures)