



August 3, 2000

Mr. Miles Bradshaw  
Senior Assistant General Counsel  
Houston Independent School District  
Hattie Mae White Administration Building  
3830 Richmond Avenue  
Houston, Texas 77027-5838

OR2000-2948

Dear Mr. Bradshaw:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137685.

The Houston Independent School District (the "district") received a request for five items of information. You indicate that you have or will release a portion of the requested information to this requestor, and that no information responsive to item 5 exists.<sup>1</sup> However, you seek to withhold information responsive to the following request items:

2. Any and all records pertaining to the complaint of Sexual Harassment that I filed on January 13, 2000; and
3. Any statements of witnesses concerning the above [item 2].

You have submitted responsive information which you contend is excepted from disclosure under sections 552.101 and 552.107 of the Government Code.

You assert that the district received this written request for information on May 16, 2000. You posted a letter to this office on the tenth business day after you received this request,

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<sup>1</sup>The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to an open records request. Open Records Decision No. 445 (1986).

May 30, 2000. This letter was received May 31, 2000. In this letter you provided a copy of the written request, however you did not state what exceptions to disclosure you assert apply to the requested information. In your second letter to this office, which was received June 5, 2000, you assert for first time that responsive information is excepted by sections 552.101 and 552.107 of the Government Code.

A governmental body that seeks to withhold information responsive to a written request must ask for the attorney general's decision and *state the exceptions that apply* within a reasonable time but not later than the 10th business day after the date of receiving the written request. Gov't Code § 552.301(b). You have not complied with this requirement. A failure to comply with the requirements of section 552.301 results in the presumption that the requested information is subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. A compelling reason is demonstrated only where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). The mere fact that information falls within the section 552.107 exception does not alone constitute a compelling reason sufficient to overcome the presumption of openness. Open Records Decision No. 630 (1994). Therefore, your argument under section 552.107 will not be considered. Exceptions under section 552.101 provide compelling reasons to withhold information. Therefore, your arguments under this section will be addressed.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). 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. *Id.* The *Ellen* court held that as information pertinent to the sexual harassment charges and investigation had been released to the public in summary form, the legitimate interests of the public had been satisfied. *Id.*

Based on *Ellen* and prior decisions of this office, *see e.g.* Open Records Decision Nos. 393 (1983), 339 (1982), a governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information which would tend to identify a witness or victim. Note, however, that the common law right of privacy does not

protect facts about a public employee's alleged misconduct on the job or complaints made about his performance. Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). Therefore, the identity and statements of the alleged offender may not be withheld from public disclosure.

Where documents responsive to a request for information contain an adequate summary of a sexual harassment complaint investigation, that summary must be released, with victim and witness identifying information redacted. The remainder of the investigation materials, including the victim and witness statements, must generally be withheld. Where no adequate summary of the sexual harassment complaint investigation is submitted, the victim and witnesses statements must be released with the victim and witnesses identifying information redacted.

While generally the identity of a purported victim must be withheld, we note that the requestor here is the complainant. A governmental body may not assert an individual's own privacy as a reason for withholding records from that individual. Open Records Decision Number 481 (1987); Gov't Code § 552.023. Therefore, information identifying the requestor, and information otherwise protected as infringing on the privacy rights of the requestor, but not on the rights on any other party, must be released to this requestor. If the department receives a subsequent request for this information from someone other than the requestor it should submit another request for opinion to this office in regard to that request.

We conclude that pages 1 through 3 must be released. Pages 4 through 45 (which are duplicated in pages 152 through 194 of the submitted materials) constitute an adequate summary of the subject investigation. The portion of this summary which reveals the identities of witnesses, other than those of the requestor or the accused, must be redacted from this summary and the remainder of the summary must be released to this requestor. We have marked the information that must be withheld. Further, the statements of the requestor, found in pages 52 through 61 of the submitted materials, must also be released to this requestor. The balance of the information found in pages 46 through 151 of the submitted information must be withheld.

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,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ljp

Ref: ID# 137538

Encl Submitted documents

cc: Ms. Wendi Rodgers  
2411 South Boulevard, # 5  
Houston, Texas 77098  
(w/o enclosures)