



August 4, 2000

Ms. Nan Hundere  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P. O. Box 460606  
San Antonio, Texas 78246-0606

OR2000-2953

Dear Ms. Hundere:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137794.

The Northside Independent School District (the "district"), which you represent, received a public information request for various information relating to a sexual harassment claim. You explain that a portion of the requested information has been released to the requestor, but argue that a portion of the information you have submitted to this office is excepted from public disclosure pursuant to sections 552.101 and 552.131 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You explain that a district employee has alleged sexual harassment/retaliation against another employee in violation of district policy and Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. § 2000e, *et seq.* You further explain that the submitted information includes employee witness statements collected during the sexual harassment investigation. You maintain that the identities and statements of the employee witnesses are excepted from public disclosure pursuant to Government Code section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy and excepts from disclosure private facts about an individual. *See Industrial*

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<sup>1</sup>Specifically, you state that you have released the following information: exhibits 2, A, B-1, and B2; pages AG-0054-0060 of exhibit C; page AG-0072 of exhibit D; and exhibit E. The remaining documents, which you argue are excepted from public disclosure, are witness statements.

*Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Information is excepted from required public disclosure by a common law right of privacy if the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and is not of legitimate concern to the public. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the El Paso court of appeals addressed the applicability of common law privacy to the files of a sexual harassment investigation. The court stated the following:

The character of some of the information sought [in a workplace sexual harassment investigation] is exactly the sort held excluded from disclosure under the privacy exemption. It involves names of witnesses required to give information under threat of discipline, their statements regarding highly embarrassing, offensive and unprofessional conduct in the workplace, their dating and sexual relationships, the state of marriages[,] and other highly personal material.

*Id.* at 524-25. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct, and conclusions by a board of inquiry. *Id.* at 525. The court ordered the release of the affidavit and the board conclusions. The 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 that contained in the released documents. *Id.* Thus, when there is an adequate summary of the investigation, the summary must be released, but the individual witness statements must be withheld. Conversely, this office has interpreted the holding in *Ellen* to imply that when an adequate summary does not exist, witness statements must be released. In either situation, however, the identities of the witnesses and victim must be redacted from the released information.

In this instance, the submitted information includes a summary of the investigation. You explain that the summary, as well as other related information, has been released to the requestor. Therefore, the individual witness statements must be withheld pursuant to section 552.101. Because section 552.101 is dispositive, we do not address your section 552.131 claim.

This letter ruling is limited to the particular records at issue in this request and 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,



Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 137794

Encl. Submitted documents

cc: Mr. Norma Essary  
818 Enchanted Rock  
San Antonio, Texas 78258  
(w/o enclosures)