



September 1, 2000

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

OR2000-3413

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# 138578.

The Department of Mental Health and Mental Retardation (the "department") received a request for information concerning an investigation of an allegation of sexual harassment including statements and documents signed by the requestor, as well as tape recordings or transcripts of the requestor's conversation. The requestor also asks for a specified employee's formal statement in the investigation. You state that you have released the employee's statement but have redacted the identity of the victim of the alleged sexual harassment. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the submitted information is protected under section 552.116.

Section 552.116 of the Government Code provides in relevant part:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. After reviewing the submitted information, we conclude that the department has not established that the internal affairs investigation into allegations of sexual harassment is an "audit" or that the investigative file constitutes an "audit working paper" as defined in section 552.116. Therefore, you may not withhold the submitted information under section 552.116.

You also assert that portions of the submitted information are excepted from disclosure under section 552.101. Section 552.101 incorporates the common law right of privacy which excepts from disclosure private facts about an individual. *See 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 found that 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 based on common law privacy. Therefore, the department must withhold the identities of the sexual harassment victims and witnesses in Exhibits A, B, and C.<sup>1</sup> We note that the department has highlighted in pink the individuals' names. However, section 552.101 and the holding in *Ellen v. Morales* only protects the identities of individuals who witnessed or have knowledge of the alleged incidents of sexual harassment. Thus, you may not withhold the identities of persons who are not witnesses in the investigation of the sexual harassment allegations. Further, the identity of the accused is not protected and must be released. We have also determined that you may not withhold the blue highlighted information in Exhibit

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<sup>1</sup> Although the requestor is a witness to the sexual harassment allegations, the requestor has a special right of access to information that relates to herself. Gov't Code § 552.023. Thus, the department need not redact the requestor's name from the submitted information.

B under section 552.101 and common law privacy. Accordingly, you must release Exhibits A, B, and C with the identities of the sexual harassment victims and witnesses redacted.

You also assert that the submitted information contains family information of department employees which you have highlighted in green. Section 552.117 of the Government Code exempts 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, the department must withhold the green highlighted information from the documents prior to release.

In summary, the department must release Exhibits A, B and C, but must withhold the names of victims and witnesses under section 552.101 and common law privacy. Further, you must withhold family information under section 552.117(1) if the employee made the required election under section 552.024. You must release the remaining information.

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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\er

Ref: ID# 138578

Encl: Submitted documents