



September 6, 2000

Ms. Kathleen Watel  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio Texas 78283-3966

OR2000-3445

Dear Ms. Watel:

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# 139038.

The City of San Antonio (the "city") received a request for (1) the original complaint reports relating to all sexual harassment complaints currently being investigated by the city, (2) all settlement agreements in sexual harassment cases over the last five years, and (3) statistical information relating to sexual harassment cases. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You have submitted representative samples of the requested information for our review.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

We initially note that you have failed to timely submit a request for a decision as required by Government Code section 552.301. Subsections 552.301(a) and (b) provide as follows:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body 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.

In this case, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). The assertion of common law privacy provides a compelling reason to overcome the presumption of openness. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We additionally note that you have failed to submit information responsive to the second and third categories of the request. Pursuant to section 552.301(e)(1)(D), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Thus, you have failed to comply with section 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. As stated above, information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. As you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information responsive to the second and third portions of the request released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

We now address your section 552.101 claim in regards to the first portion of the request. The requestor seeks the original complaint reports relating to all sexual harassment

complaints currently being investigated by the city. You argue the information is excepted from public disclosure pursuant to section 552.101 in conjunction with common law privacy. 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 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 consists of various written complaints by sexual harassment victims involving various cases of alleged sexual harassment. The submitted information does not contain summaries of the individual cases. Therefore, we conclude that the complaints must be released; however, the identifying information of the witnesses and victims must be redacted prior to release.

In summary, the information responsive to the first portion of the request must be released to the requestor after redacting certain information as noted above. The information

responsive to the second and third portions of the request must be released 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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 "Julie Reagan Watson" followed by a horizontal line.

Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 139038

Encl. Submitted documents

cc: Mr. Brian Collister  
c/o KMOL TV  
1031 Navarro Street  
San Antonio, Texas 78205  
(w/o enclosures)