



December 6, 2000

Ms. Sara Hardner Leon
Powell & Leon, L.L.P.
808 West Avenue
Austin, Texas 78701-2208

OR2000-4611

Dear Ms. Leon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142152.

The Little Elm Independent School District (the "district"), which you represent, received a written request for all personnel records of three named former employees. You state that the district has released much of the requested information, including summaries of sexual harassment investigations involving the three employees and those employees statements regarding the alleged sexual harassment. You contend that other documents coming within the ambit of the request are excepted from public disclosure pursuant to, *inter alia*, sections 552.101 and 552.107(1) of the Government Code.¹

Section 552.101 of the Government Code protects from public disclosure information coming within the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976) (common law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and is of no legitimate concern to the public). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation.

The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment are exactly the types of information specifically excluded from

¹Because we resolve your request under sections 552.101 and 552.107(1), we need not address the applicability of the other exceptions you raised. *But see* n.2.

disclosure under the privacy doctrine as described in *Industrial Foundation. Ellen*, 840 S.W.2d at 525. However, the court ordered the release of the affidavit of the person under investigation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance “the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements.” *Id.*

In this instance, we believe that the information that the district has released regarding the alleged sexual harassment constitutes an adequate summary of those investigations. Consequently, in accordance with *Ellen*, the district must withhold all of the witness statements submitted to this office as “Attachment C” pursuant to common law privacy as incorporated into section 552.101 of the Government Code.²

You also contend that the documents you submitted to this office as “Attachment D” are excepted from public disclosure under section 552.107(1) of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice or opinion and client confidences. *Id.* After reviewing the information you submitted to this office, we agree that the contents of Attachment D constitute attorney-client privileged communications and thus come within the protection of section 552.107(1). The district may withhold these documents in their entirety.

In summary, the district must withhold the witness statements contained in Attachment C in their entirety pursuant to common law privacy. The district may also withhold all documents submitted as Attachment D pursuant to the attorney-client privilege as incorporated into section 552.107(1) of the Government Code.

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.

²We also note that many of the witness statements constitute students’ “education records” made confidential under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

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).

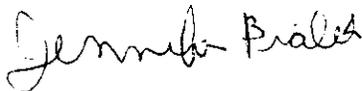
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Hadassah Schloss at 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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/seg

Ref: ID# 142152

Encl. Submitted documents

cc: Mr. Matt Frazier
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(w/o enclosures)