



December 18, 2000

Ms. Jana Kinkade  
Henslee, Fowler, Hepworth & Schwartz  
800 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR2000-4733

Dear Ms. Kinkade:

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# 142388.

The Weatherford Independent School District ("WISD") received a request for a file on a former teacher. Specifically, the requestor sought information regarding the nature of certain allegations of assault and sexual harassment against the former teacher, how those allegations came to be known by WISD, and how WISD handled the matter. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that portions of the information are excepted under section 552.101 in conjunction with the common law right to privacy. Section 552.101 of the Government Code excepts from disclosure information that is "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common law right of privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court held that information is excepted from disclosure if "(1) the information contains highly intimate or embarrassing facts the [release] of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public." 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common law privacy to files of an investigation of allegations of sexual harassment. 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, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* 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 what is contained in the documents that have been ordered released." *Id.*

According to *Ellen*, the public has a legitimate interest in documents that adequately summarize sexual harassment allegations and the results of investigations into those allegations, but not in the identities or detailed statements of the victim and witnesses. *See id;* see also Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). We find that two documents in the investigation file, when taken together, constitute an adequate summary of the sexual harassment allegation and investigation. You must release these documents with the identifying information of the victim and witness redacted. The remainder of the submitted information must be withheld pursuant to *Ellen* and section 552.101 of the Government Code. We have marked the information that must be withheld. Based on this finding, we need not reach the remainder of your claims under sections 552.026, 552.114, and 552.131.

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

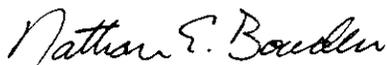
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB\er

Ref: ID# 142388

Encl: Submitted documents

cc: Ms. Dianna Hunt, Reporter  
Fort Worth Star-Telegram  
400 West Seventh Street  
Fort Worth, Texas 76102  
(w/o enclosures)