



August 13, 2001

Mr. Edward M. Sosa
Chief Legal Officer
El Paso County
4815 Alameda
El Paso, Texas 79905

OR2001-3541

Dear Mr. Sosa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150659.

The R.E. Thomason General Hospital (the "hospital") received a written request for records pertaining to the requestor's employment with the hospital. You state that most of the requested information has been released to the requestor, including redacted copies of documents pertaining to a sexual harassment complaint filed by the requestor. You contend the redacted information is excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right of privacy.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including 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

¹We assume for purposes of this ruling that the documents you submitted to this office are the only documents held by the district pertaining to the sexual harassment complaint. See Gov't Code § 552.301(e)(1)(D); .302. Additionally, we note that although you also raise section 552.117 of the Government Code, it does not appear that you have redacted any such information from the documents you provided to the requestor. Accordingly, we do not address the applicability of section 552.117 to the records at issue.

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, among other things, individual witness and victim statements pertaining to the alleged sexual harassment.

The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment were excluded from disclosure under the privacy doctrine as described in *Industrial Foundation* because "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Ellen*, 840 S.W.2d at 525. In determining that the identities of witnesses to sexual harassment were protected by common law privacy, the court concluded that the information before the court

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.

Ellen, 840 S.W.2d at 524, 525.

In this instance, however, after reviewing the documents you submitted to this office, we conclude that several of the individuals whose names you redacted do not constitute "witnesses" who have a privacy interest in their respective identities. In contrast to those individuals in *Ellen*, several of the individuals whose names you have redacted do not appear to have been "witnesses" to the alleged harassment, but rather were either merely referenced in the harassment complaint or were the individuals to whom the sexual harassment was reported. It does not appear that these individuals reported to the hospital any objectionable behavior to which they were a witness; consequently, the mere fact that their names appear in the records at issue does not implicate those individuals' privacy interests. We therefore conclude these individuals' identities are not excepted from public disclosure under *Ellen*. Accordingly, we marked the redacted information that the hospital must release to the requestor.

On the other hand, it is not clear to this office that the two remaining individuals whose names you have highlighted must be withheld pursuant to common law privacy. These names must be withheld only if these individuals were actual witnesses to the alleged harassment; otherwise, these individuals' names must be released.

You also seek to withhold the dates of birth of several individuals pursuant to common law privacy. However, a public employee's date of birth is not protected under common law privacy. Attorney General Opinion MW-283 (1980) (public employee's date of birth not protected by statutory predecessor to section 552.102). Consequently, the hospital must release the redacted birth date information to the requestor.

We decline at this time to issue the hospital a previous determination regarding this issues. 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 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# 150659

Enc. Submitted documents

c: Ms. Aurora Arriola
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(w/o enclosures)