



August 27, 2001

Mr. Dennis P. Duffy
General Counsel
University of Houston System
311 East Cullen Building, Suite 212
Houston, Texas 77204-2028

OR2001-3769

Dear Mr. Duffy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151203.

The University of Houston Police Department (the "department") received a written request for the police reports pertaining to a University of Houston employee's complaints regarding vandalism to her car, threats made to the employee, and related harassment. You contend that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.

You first contend that most of the information at issue is protected by common law privacy in accordance with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), and therefore must be withheld from the public pursuant to section 552.101 of the Government Code. Section 552.101 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 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 administrative investigation of allegations of sexual harassment in the workplace. After reviewing the

information at issue here, however, we conclude that *Ellen* is inapposite in this instance. Unlike the information before the court in *Ellen*, the information at issue here concerns allegations of a criminal nature that was investigated as such by the department. Consequently, the analysis found in *Ellen* is inapplicable here. We therefore will consider your arguments under section 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” You state that the investigation of the vandalism, harassment, and threats against the university employee is “open and active.” Based on this representation, we conclude that you have established the applicability of section 552.108(a)(1) to the information at issue. The department therefore may withhold most of the information related to Case No. 99-25589 pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Because you have raised no other applicable exception to disclosure, the department must release these types of information regarding each of the criminal allegations in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note that the department has the discretion to release all or part of the remaining information that is not otherwise made confidential by law. Gov’t Code § 552.007.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/RWP/seg

Ref: ID# 151203

Enc. Submitted documents

c: Daily Cougar Reporter
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(w/o enclosures)