



November 14, 2002

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P. O. Box 149030
Austin, Texas 78714-9030

OR2002-6493

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172182.

The Texas Department of Human Services (the "department") received a request for copies of printed and handwritten materials created as a result of two specified investigations. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the information at issue is subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[;]

Gov't Code § 552.022(a)(1). The submitted information constitutes two completed sexual harassment investigations that must be released under section 552.022(a)(1), unless they are confidential under other law or are excepted from disclosure under section 552.108 of the

Government Code.¹ Since the department claims that portions of this information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code, we address those claims.

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. We note that information is protected from disclosure under the common-law right to privacy if (1) it contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

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. *See Ellen*, 840 S.W.2d at 525. 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. *See id.* 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. *See id.* In concluding, however, 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.* Therefore, when there is an adequate summary of an investigation, the summary and any statements of the person under investigation must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements.

¹ As the department does not claim that any portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code, we need not address this particular exception to disclosure.

Based on our review of your arguments and the information at issue, we find that the accused individuals' statements, together with the conclusions of the board of inquiry, in both investigations comprise adequate summaries of the investigations. *See id.* at 525-26. We have marked this information for your review. Accordingly, we conclude that the department must withhold the entirety of the remaining submitted information regarding both investigations pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. We note, however, that portions of the summaries in both investigations constitute identifying information of victims of and witnesses to alleged sexual harassment. Accordingly, we also conclude that the department must withhold the identifying information of the victims and witnesses that we have marked in these summaries pursuant to section 552.101 in conjunction with the common-law right to privacy.

You also claim that portions of the remaining information at issue are excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential pursuant to section 552.024 of the Government Code. *See Gov't Code § 552.117(1)*. However, such information may not be withheld from disclosure under section 552.117(1) if the employee with whom this information is associated did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality for this information under section 552.024 was not made until after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*.

Accordingly, we conclude that the department must withhold the information that we have marked in each summary pursuant to section 552.117(1) of the Government Code, if the employees with whom this information is associated requested confidentiality for this information in accordance with section 552.024 prior to the time that the department received the present request for information. The department must release the remaining portions of both summaries to the requestor.

In summary, the department must withhold the identifying information of the victims and witnesses that we have marked in both summaries pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must also withhold the information that we have marked in each summary pursuant to

section 552.117(1) of the Government Code, if the employees with whom this information is associated requested confidentiality for this information in accordance with section 552.024 prior to the time that the department received the present request for information. The department must release to the requestor the remaining portions of both summaries. The department must withhold the entirety of the remaining submitted information regarding both investigations pursuant to section 552.101 in conjunction with the common-law right to privacy.

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

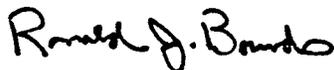
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body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 172182

Enc. Marked documents

cc: Ms. Janie R. Tarin
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(w/o enclosures)