



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 7, 2003

Ms. Kathleen Finck  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2003-3084

Dear Ms. Finck:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 180688.

The City of San Antonio Park Police Department (the "Department") received a request for copies of "any and all complaints, demotions, reprimands that have been filed against [a named individual]." You assert portions of the responsive records are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have reviewed the information you submitted and we have considered the exceptions you claim.

Initially, we address your contention that the Department should not disclose the identifying information of witnesses and their statements under section 552.101 of the Government Code because witnesses to sexual harassment are protected by common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information 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). Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the disclosure of the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

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. In *Ellen*, the court considered whether the public had

a legitimate interest in the identities of witnesses and their statements regarding allegations of *sexual harassment* in an *employment* context - one employee sexually harassing another employee. *Id.* at 525. In this instance, you claim the information pertains to allegations of sexual harassment. However, we disagree. Instead, we find the information concerns allegations of a Department employee harassing an *individual*, not a fellow employee, by making comments of a sexual nature. Therefore, as the allegations do not concern sexual harassment in the employment arena, we conclude *Ellen* does not provide authority for the Department to withhold the names of the witnesses and their statements.

Next, we note the applicability of section 552.117(2) of the Government Code. This provision excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members. Gov't Code § 552.117(2). Article 2.12 of the Code of Criminal Procedure delineates municipal park and recreational patrolmen and security officers as peace officers. Code Crim. Proc. art. 2.12(13). The submitted documents contain personal information about a municipal park and recreational peace officer. Therefore, the Department must withhold the information we have marked under section 552.117(2) of the Government Code.

In summary, the Department must withhold the marked personal information of the peace officer under section 552.117(2) of the Government Code. The Department must release the remainder of the submitted information.

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 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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 180688

Enc: Submitted documents

c: Mr. Roberto Vargas  
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(w/o enclosures)