



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 15, 2003

Ms. Ashley D. Fourt  
Assistant County Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2003-5743

Dear Ms. Fourt:

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# 186035.

The Tarrant County Sheriff's Department (the "Department") received a request to review the requestor's personnel file and for any investigations and/or disciplinary actions to be copied and sent to Dyncorp International. You inform us that the Department has made all public documents available to the requestor. You assert that portions of the information you submitted for our review in Exhibit C are excepted from disclosure under section 552.101 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part, as follows:

[T]he 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). In this instance, the submitted information constitutes completed internal affairs investigations. Thus, the Department must release the information, unless it is expressly confidential under other law or excepted from disclosure under section 552.108. As section 552.101 constitutes other law for purposes of section 552.022, we will address your arguments under this provision.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683. Previously, this office found some kinds of medical information and information indicating specific illnesses are private. Open Records Decision Nos. 470 (1987) (illness from emotional and job-related stress), 455 (1987) (illnesses, operations, and physical handicaps).

Further, 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 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. *Id.* 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.* When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure.

In this instance, you contend Exhibit C consists of three internal affairs investigations of sexual harassment and/or sexual misconduct allegations, which warrant protection under *Ellen*. Upon review, we find that two of the internal affairs investigations, # 00-IAD-080 and #95-IAD-102, constitute completed sexual harassment investigations. Further, we find that the documents we have marked in #00-IAD-080 constitute an adequate summary of the

investigation and include a statement of the accused. Therefore, we conclude that under *Ellen*, the Department must release the information we have marked, but must withhold the identifying information of the victim and the witnesses, which we have marked, under section 552.101 in conjunction with common-law privacy. The Department must withhold the remaining information relating to #00-IAD-080.

With respect to #95-IAD-102, we find no adequate summary regarding these allegations. Thus, as no adequate summary exists, the Department must release the information pertaining to #95-IAD-102 to the requestor. *See id.* However, the Department must withhold the identities of the victim and witnesses of the harassment, which we have marked, from the requestor in accordance with section 552.101 of the Government Code and common-law privacy. *See id.* Further, we find this investigative file contains additional private information, which we have marked. *See Indus. Found.*, 540 S.W.2d at 685.

We note that the remaining internal affairs investigation submitted for our review, #02-IAD-094, involves allegations of staff misconduct of a sexual nature, but not sexual harassment. Thus, we conclude that the Department may not withhold file #02-IAD-094 pursuant to section 552.101 in conjunction with *Ellen*. Nevertheless, due to the nature of the allegations, we find the complainant's right to privacy has been implicated. Accordingly, we conclude the Department must withhold the identifying information of the complainant at issue, which we have marked in investigative file #02-IAD-094, under section 552.101 of the Government Code in conjunction with common-law privacy.

Also, we note when a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). We have marked the information the Department must withhold under section 552.101 in conjunction with common-law privacy and *Reporters Committee*. *See id.*

Next, we address your assertion that the remainder of information subject to release in Exhibit C contains documents governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 552.101 also incorporates information protected by other statutes. Section 159.002 of the MPA reads, in part, as follows:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a), (b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). In this instance, the documents in Exhibit C do not contain the types of records contemplated by the MPA. Therefore, we conclude the Department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

In summary, the Department must withhold the information we have marked under section 552.101 of the Government Code. The Department must release the remainder of the information in Exhibit C to the requestor.

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# 186035

Enc: Submitted documents

c: Mr. Barry Wilson  
Tarrant County Sheriff's Department  
100 North Lamar  
Fort Worth, Texas 76196-0201  
(w/o enclosures)