



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2004

Mr. Jeff Lopez
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2004-5480

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204542.

The Texas Department of Public Safety (the "department") received a request for an investigative file concerning a named individual. You believe that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). You inform us that the submitted information relates to a Texas Ranger investigation of alleged sexual assault and official oppression. You note that the names of victims and witnesses of alleged sexual harassment were held to be protected from public disclosure by common-law privacy in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—1992, writ denied). You believe that the identities of victims or witnesses in the submitted investigative documents are likewise private under section 552.101.

Having considered your arguments, we note that the information at issue in *Morales v. Ellen* related to an administrative investigation of alleged sexual harassment in the workplace. *See* 840 S.W.2d at 522. The *Ellen* court noted there was evidence that no criminal investigation or prosecution resulted from the investigation. *See id.* at 526. In this instance, the submitted documents relate to an investigation of alleged sexual assault and official oppression involving a law enforcement officer and a member of the public. Sexual assault and official oppression are criminal offenses. *See* Pen. Code §§ 39.03, 39.04. We therefore find that the privacy rationale applied in *Ellen* is not applicable in this instance. Consequently, the department may not withhold any of the submitted information under section 552.101 on the basis of *Morales v. Ellen*.

The common-law right to privacy also encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 616 at 2-3 (1993) (information compiled by governmental entity that identifies individual as criminal suspect, arrestee, or defendant implicates individual's privacy interests), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

The identity of an alleged sexual assault victim is ordinarily private under section 552.101 in conjunction with *Industrial Foundation*. *See also* Open Records Decision Nos. 393 (1983) (information that identifies or tends to identify sexual assault victim protected by privacy under statutory predecessor to Gov't Code § 552.101), 339 (1982) (same). In this instance, however, the submitted documents use a pseudonym to identify the victim of the alleged sexual assault. Furthermore, these documents do not reflect that the requestor knows the victim's actual identity. Therefore, the department need not withhold any of the submitted information for the purpose of protecting the alleged sexual assault victim's privacy interests. Likewise, information relating to one of the witnesses that would ordinarily be private need not be withheld in this instance, as the submitted documents also use a pseudonym to identify that witness. We conclude, however, that a small amount of other information is protected by common-law privacy under section 552.101. We have marked the information that the department must withhold.

The department also may be required to withhold other information under section 552.1175. This section applies to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, and provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Thus, if the information that we have marked under section 552.1175 relates to a peace officer who elected to restrict access to the marked information in accordance with section 552.1175, then the department must withhold that information under section 552.1175.

The department also may be required to withhold the social security number that we have marked under section 552.101. This section also encompasses information that another statute makes confidential. A social security number is confidential under the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental entity under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the marked social security number is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that this social security number was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing the marked social security number, the department should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

We also have marked a Texas driver's license number. Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The department must withhold the Texas driver's license number under section 552.130.

In summary: (1) the department must withhold the marked information that is protected by common-law privacy under section 552.101; (2) the information that we have marked under section 552.1175 is excepted from disclosure if it relates to a peace officer who elected to restrict access to the information in accordance with section 552.1175(b); (3) the department

also may be required to withhold the marked social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (4) the Texas driver's license number must be withheld under section 552.130. The rest of the submitted information must be released.

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).

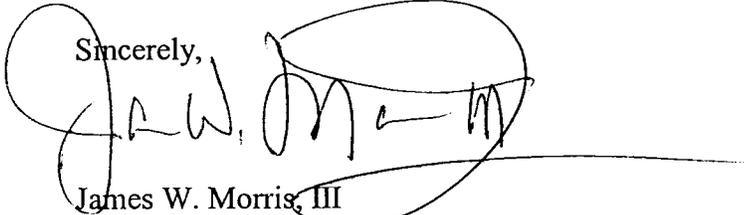
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 204542

Enc: Submitted documents

c: Mr. Mark D. White
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(w/o enclosures)