



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 3, 2004

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR2004-6541

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206385.

The Texas Youth Commission (the "commission") received a request for information relating to a sexual harassment investigation involving the requestor. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *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 records 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.* Thus, 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.

Upon review, we determine that the submitted investigation report for case number 04-461, which we have marked, constitutes an adequate summary of the investigation at issue. Therefore, the investigation report may not be withheld. *See Ellen*, 840 S.W.2d at 525. We also find that the statement of the alleged perpetrator contained in the submitted documents is subject to a legitimate public interest and is therefore not protected by common-law privacy. Accordingly, the commission may not withhold the statement of the alleged perpetrator. However, information identifying complainants and witnesses contained in the investigation report and the alleged perpetrator’s statement are protected by common-law privacy. Accordingly, we have marked the information that the commission must withhold from the investigation report and the statement of the alleged perpetrator pursuant to section 552.101 of the Government Code.

You also contend that the names of juvenile offenders appearing in the documents are excepted under section 552.101 in conjunction with common-law privacy. Upon review, we agree that the name of a juvenile offender who is not a witness in the investigation contained in the investigation report is protected by common-law privacy. We have marked the information identifying a juvenile offender in the investigation report that the commission must withhold pursuant to section 552.101 of the Government Code. *See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007.*

In summary, we have marked information identifying complainants and witnesses in the investigation report and in the alleged perpetrator’s statement that the commission must withhold pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We have also marked the name of a juvenile offender in the investigation report that the commission must withhold pursuant to section 552.101 and common-law privacy. The remainder of the investigation report and the alleged perpetrator’s statement must be released to the requestor. However, the remaining submitted information is protected by common-law privacy and must be withheld pursuant to section 552.101.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 206385

Enc: Submitted documents

c: Mr. Kenneth Williams
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(w/o enclosures)