



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2004

Mr. James Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2004-10468

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214762.

The Texas Department of Criminal Justice (the "department") received two requests for information relating to allegations of sexual harassment and official oppression. The submitted information includes records pertaining to a certain EEO investigation and records pertaining to a criminal investigation by the Office of the Inspector General. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we must address the department's procedural obligations under the Public Information Act (the "Act"). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

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<sup>1</sup>We assume the department has released the other information sought in this request. If it has not, it must do so at this time. See Gov't Code §§ 552.301, .302.

The department did not submit a portion of the requested information within the fifteen-day deadline mandated by section 552.301. See Gov't Code § 552.301. Because this information, which you have identified, was not timely submitted, it is presumed to be public information. *Id.* § 552.302. In order to overcome this presumption, the department must provide compelling reasons why this information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see Open Records Decision No. 630 (1994). You assert that portions of this information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. Sections 552.101 and 552.117 can provide compelling reasons to overcome the presumption of openness; therefore, we will consider the applicability of these exceptions to the information that was not timely submitted and to the remaining submitted information.

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. Information is protected from disclosure by the common-law right to privacy when it 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 *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common-law right to privacy 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 since concluded that other types of information also are also protected from disclosure by the common-law right to privacy. See Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 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).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied the common-law right to privacy addressed in *Industrial Foundation* to an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. See 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. See *id.* The court further held, however, that “the public does 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.

In this instance, the submitted information consists of statements by the victims of the alleged sexual harassment, statements of witnesses, the statement of the accused, and other supporting documents. Based on our review of the submitted information, we find that none of the submitted documents constitutes an adequate summary of the investigation. However, a portion of this information, which we have marked, reveals the identities of alleged victims of sexual harassment and witnesses. Accordingly, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>2</sup>

We now turn to your claim regarding section 552.117 of the Government Code. Section 552.117(a)(3) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department, regardless of whether the employees complied with section 552.1175. *See* Gov't Code § 552.117(a)(3). We have marked the information that is excepted from disclosure under section 552.117(a)(3).<sup>3</sup>

Next, section 552.108 of the Government Code, the "law enforcement exception," excepts from required public disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 applies to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

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<sup>2</sup>Section 552.023 of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests. In this instance, the requestor has a special right of access under section 552.023 to the information about her client's sexual harassment complaint that normally would be protected under section 552.101 and common-law privacy. If the office receives another request for this same information from a different requestor, the office should resubmit the information to us and request another ruling. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

<sup>3</sup>Section 552.023 also grants the requestor a special right of access to her client's home address and telephone number, social security number, and family member information that normally would be protected under section 552.117(a)(3). If the office receives another request for this same information from a different requestor, the office should resubmit the information to us and request another ruling. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

You indicate that a portion of the submitted information relates to an on-going criminal investigation conducted by the department's Office of the Inspector General regarding allegations of official oppression through sexual harassment. Therefore, we find that the release of this information, including the submitted audiotape, would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a). Thus, we conclude that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Basic information under section 552.108(c) includes the identity of the complainant and a detailed description of the offense. *See id.* at 3-4. We note, however, that case number 04-2198 relates to allegations of sexual harassment. The identity of an alleged victim of sexual harassment is excepted from public disclosure under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.101; 840 S.W.2d 519. Thus, the department must withhold the identity of the complainants in case number 04-2198 under section 552.101 in conjunction with common-law privacy. Otherwise, we find the remaining basic information is not protected by privacy, and the department must release basic information, even if that information does not literally appear on the front page of an offense or arrest report.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and section 552.117(a)(3). The department may withhold the audiotape and remaining criminal investigation information it seeks to withhold under section 552.108(a)(1). Basic information must be released, with the exception of the identities of the complainants, which must be withheld under section 552.101 and common-law 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).

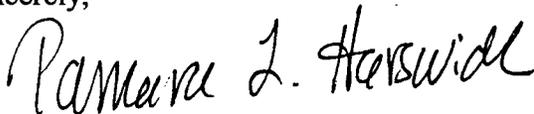
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 214762

Enc. Submitted documents

c: Ms. Joyce Phoenix  
Attorney and Counselor at Law  
210 South Third Street  
Richmond, Texas 77469  
(w/o enclosures)