



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2004

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

OR2004-10626

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# 214976.

The Texas Department of Criminal Justice (the "department") received a request for information related to an investigation concerning an incident between the requestor and another named department employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrines 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 540 S.W.2d at 683. The court in *Morales v. Ellen* held that, although records of a sexual harassment investigation by a governmental body are generally subject to a legitimate public interest, the identities of victims and witnesses of alleged sexual harassment contained in investigation records are

generally protected by common-law privacy. *See* 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are protected by common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, specific illnesses, procedures, and physical disabilities).

You indicate that release of the submitted information may implicate the privacy of the individuals involved in the investigation at issue, and you therefore contend that this information may be excepted under section 552.101 in conjunction with common-law privacy. We note, however, that *Ellen* addressed the applicability of common-law privacy to information concerning an investigation of sexual harassment. While the investigation at issue in the present request pertains to potentially private information concerning a department employee, we find that the department's investigation does not concern an allegation of sexual harassment. Consequently, we find that the holding in *Ellen* is not applicable to any of the information in question. We further find that the investigation at issue relates to the workplace conduct of public employees and thus generally pertains to matters of legitimate public interest. *See* Open Records Decision Nos. 405 at 2 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We therefore determine that the submitted information is generally not protected under common-law privacy and may not be withheld under section 552.101 on that basis.

As noted, the submitted documents contain medical information concerning the requestor. However, the requestor has a special right of access to this information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Accordingly, the department may not withhold any portion of the submitted information pursuant to section 552.101 in conjunction with common-law privacy in this instance.

You also indicate that the submitted documents include information that is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(3) excepts the home address and telephone number, social security number, and family member information of employees of the department. We agree that the department must withhold the social security numbers of employees other than the requestor in this case pursuant to

section 552.117(a)(3) of the Government Code. The requestor has a right of access to his own social security number. *See* Gov't Code § 552.023.

In summary, the department must withhold the social security numbers of employees other than the requestor in this case pursuant to section 552.117(a)(3) of the Government Code. The remainder of the submitted information must be released to the requestor. However, because the records at issue contain information that is confidential with respect to the general public, in the event the department receives another request for this information from someone other than this requestor or his authorized representative, the department should seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "D. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 214976

Enc: Submitted documents

c: Mr. Gary Davis  
4021 Steck Avenue #613  
Austin, Texas 78759  
(w/o enclosures)