ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2005

Mr. David L. Hay
Officer for Public Information
Dallas Community College District
701 Elm Street
Dallas, Texas 75202-3299

OR2005-08151

Dear Mr. Hay:

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# 231846.

The Dallas Community College District ("district") received a request for the personnel file of a named officer. You state that you will release some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1]

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

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

[1]We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d 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, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

In this instance, you state that Exhibits D through D.13 relate to a sexual harassment investigation. As such, you state that Exhibits D through D.5 represent an adequate summary of the investigation and seek to only withhold the yellow highlighted information in these exhibits. Further, you seek to withhold Exhibits D.6 through D.13 in their entirety. After reviewing these exhibits, we agree that Exhibits D through D.5 are an adequate summary of the investigation into the alleged sexual harassment. Accordingly, the district must release Exhibits D through D.5. In doing so, however, the district must withhold the identifying information of the alleged victim and witnesses relating to the investigation of the alleged sexual harassment. Additionally, the district must withhold the remaining portions of the investigation, Exhibits D.6 through D.13, in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy and Ellen.

You claim that Exhibits E through E.2, which are complaints against the named officer, are excepted from public disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." We note that section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.–Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.–El Paso 1992, writ denied) (statutory predecessor to section 552.108 inapplicable to internal investigation that did not result in criminal investigation or prosecution). In this instance, the complaint at issue relates to an administrative investigation into the complaint. You do not inform us, and the documents

do not otherwise indicate, that this investigation resulted in a criminal investigation or prosecution of the involved officers. Accordingly, the district may not withhold Exhibits E through E.2 under section 552.108(a)(1) of the Government Code. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (finding that section 552.108 is not generally applicable to the to information relating to complaints involving law enforcement officers); *see also* Open Records Decision Nos. 562 at 10 (1990) (stating that law enforcement exception does not protect general personnel information about a peace officer or information concerning complaints filed against the officer), 361 at 2-3 (1983) (information relating to complaints against peace officer and disciplinary actions resulting therefrom not excepted under statutory predecessor of section 552.108).

Next, you claim that Exhibits F and G are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal statutes. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of this form under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we find that Exhibit F is confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You claim that Exhibit G contains an employee W-4 form. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the district must withhold this form pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

You claim that Exhibits H and H.1, and the highlighted information in Exhibits J and K are excepted from public disclosure under section 552.101 in conjunction with common-law privacy. The types 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. Additionally, this office has also found that information that reflects an individual's personal financial decisions, as well as some kinds of medical information or information indicating disabilities or specific illnesses, are generally excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 455 (1987) (prescription drugs, illnesses,

operations, and physical handicaps). Accordingly, the district must withhold Exhibits H, H.1, and K in their entirety, as well as the highlighted information in Exhibit J under section 552.101 in conjunction with common-law privacy. We have also marked additional information in Exhibits E through E.2 that must be withheld under section 552.101 in conjunction with common-law privacy.

You claim that the highlighted information in Exhibit L is excepted under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that Exhibit L pertains to a case that is closed and concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c); *see Houston Chronicle*, 531 S.W.2d at 185; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, the district must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. The district seeks to withhold the narrative portions of the report under section 552.108(a)(2). The district must release a detailed description of the offense. Furthermore, the district may release all or part of the remaining highlighted information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

You claim that Exhibit I is a birth certificate that is excepted from disclosure under section 552.115 of the Government Code. Birth or death records maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official are excepted from required public disclosure under section 552.115. However, because the district is not the bureau of vital statistics or a local registration official, birth certificates held by the district may not be withheld under section 552.115 of the Government Code. *See* Open Records Decision No. 338 (1982).

You claim that Exhibit AA is excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

> (a) Information is excepted from required public disclosure if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

> (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Upon review, we agree that the district must withhold the driver's license in Exhibit AA under section 552.130 of the Government Code.

You claim that the highlighted information in Exhibit BB is excepted from public disclosure under section 552.117(a) of the Government Code. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.[2] We agree that most of the information you have highlighted must be withheld under section 552.117(a)(2). However, the officer's middle initial may not be withheld under section 552.117(a)(2). Further, we have marked additional personal information in Exhibit BB and other exhibits that must be withheld under section 552.117(a)(2) of the Government Code.

In summary, the department must withhold the marked information in Exhibits D through D.5 and the entirety of Exhibits D.6 through D.13 under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. Exhibit F is a confidential I-9 form and may only be released in compliance with the federal laws and regulations governing the employment verification system. The district must withhold Exhibit G under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The district must withhold Exhibits H, H.1, and K in their entirety, as well as the highlighted information in Exhibit J and the information we marked in Exhibits E through E.2 under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the basic information, the district may withhold the remaining information in Exhibit L under section 552.108(a)(2) of the Government Code. The district must withhold Exhibit AA under section 552.130 of the Government Code. The district must withhold most of the highlighted information in Exhibit BB, as well as the information we have marked under section 552.117(a)(2). The remaining 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

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[2] "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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).

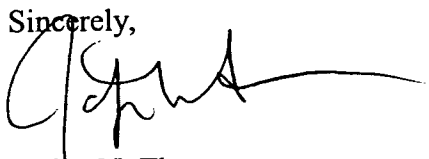
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



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Ref: ID# 231846

Enc. Submitted documents

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