



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2007

Ms. Carolyn Foster  
Assistant General Counsel  
Legal Affairs  
Parkland Health & Hospital System  
5201 Harry Hines Boulevard  
Dallas, Texas 75235

OR2007-13776

Dear Ms. Foster:

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# 292475.

The Dallas County Hospital District (the "district") received two requests from the same requestor for any records pertaining to a specified investigation involving the requestor's client, the district's procedures in reference to the matter, and specified complaints filed by the requestor's client. You state that the district has no responsive information regarding complaints filed by the requestor's client.<sup>1</sup> You state you will provide the requestor with some of the requested information. However, you claim that the submitted information is 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 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 if (1) the information contains highly intimate or embarrassing facts, the

---

<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

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). 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 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.*

You contend that the public availability of portions of the submitted information is governed by the decision in *Ellen*. Although the information in question pertains to an investigation of harassment, we find that it is not related to an investigation of sexual harassment for the purposes of *Ellen*. Moreover, the information in question concerns employees of the district and their conduct in the workplace. As this office has often stated, the public generally has a legitimate interest in information relating to public employees and public employment. *See, e.g.*, Open Records Decision Nos. 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). We therefore conclude that none of the submitted information is protected by common-law privacy under *Ellen*, and the district may not withhold any of the information on that basis under section 552.101 of the Government Code.

We note, however, that a portion of the submitted information may be excepted under section 552.117 of the Government Code.<sup>2</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. However, we note that a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)). Whether a particular piece of information is protected by section 552.117 must be

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117 on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The district may not withhold the information we have marked under section 552.117 for those employees who did not make a timely election to keep the information confidential.

In summary, the district must withhold information we have marked pursuant to section 552.117 of the Government Code for employees who have timely elected to keep their personal information confidential. 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 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. 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,



Chanita Chantaplin-McLelland  
Assistant Attorney General  
Open Records Division

CC/jb

Ref: ID# 292475

Enc. Submitted documents

cc: Mr. William Chu  
Law Offices of William Chu  
15058 Beltway Drive, Suite 116  
Addison, Texas 75001  
(w/o enclosures)