



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1996

Ms. Jennifer Soldano
Assistant General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR96-1053

Dear Ms. Soldano:

You seek clarification and reconsideration of Open Records Letter No. 96-0725 (1996), in which this office concluded that section 552.103 excepted from disclosure most of the records submitted for our review. Your request for reconsideration and clarification was assigned ID#100151.

In particular, you ask us to reconsider our ruling regarding the release of certain anonymous complaints filed with the Department of Transportation (the "department"). We concluded that the department must release the records because the opposing party to the complaint filed with the Texas Commission on Human Rights, Ms. Andrea Nelson, (the "*Nelson* litigation") had already gained access to the anonymous complaints. You also wish to withhold the anonymous complaint letters on the basis of false-light privacy. Finally, you seek clarification regarding our statement that you must release all records that have been seen by the opposing parties in the *Nelson* and *Teague* litigation. You state that Ms. Nelson has had access in her official capacity to virtually all records involved in the lawsuit styled *Marvin Lee Berry and Kenneth Berry v. Sharlotte L. Teague*, No. 95-5188-G (319th Dist. Ct., Nueces County, Tex., Sept. 11, 1995) (the "*Teague* litigation"). You therefore posit that you would be required to release all the records related to the *Teague* litigation because the opposing party in the *Nelson* litigation has seen the records. We address your arguments in turn.

You claim that the anonymous complaint letters and other records involved in the *Nelson* litigation were seen by Ms. Nelson in her official capacity as a department administrator and not in the process of the anticipated litigation. Regarding the anonymous complaint letters, it is clear from the context of the letters and other records in the file that Ms. Nelson and other employees who were the subject of the complaint

letters were given copies of the letters. Thus, we do not believe that Ms. Nelson had access to those letters in her administrative capacity. Moreover, as we stated in Open Records Letter No. 96-0725 (1996), we conclude that those letters do not relate to the *Teague* litigation. Thus, you may not withhold the anonymous complaint letters under section 552.103. Regarding all other audits and records that relate to the *Nelson* litigation to which Ms. Nelson had access in her administrative capacity, you may withhold only those records to which she had access before she filed her complaint. See Attorney General Opinion JM-119 (1983) at 2. Any related records that she has had access to after the complaint was filed may not be withheld under section 552.103.

You also claim that the complaint letters are excepted from disclosure on the basis of common-law privacy. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no 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). We conclude that the the complaint letters are not excepted from disclosure under the common-law privacy aspect of section 552.101 of the Government Code.

Regarding your claims that the complaint letters are protected on the basis of false-light privacy, we note that false light privacy is not an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Therefore, a governmental body may not withhold information under section 552.101 of the Government Code merely because it might place a person in a false light. See Open Records Decision No. 579 (1990).

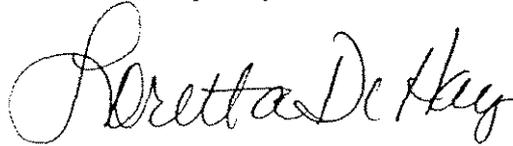
Lastly, we address your statements about our conclusion regarding the *Teague* litigation. You are concerned that Ms. Nelson, a party to the *Nelson* litigation, has had access in her administrative capacity to many of the records related to the *Teague* litigation, and that therefore you may not withhold the records that relate to the *Teague* litigation. As explained above, as long as Ms. Nelson had access to those records in a strictly administrative capacity, you may withhold any records that relate to either the *Teague* or the *Nelson* litigation under section 552.103. Documents to which Ms. Nelson had access after her complaint was filed that relate to both litigations must be released.

In summary, most of the records submitted for our review in Open Records Letter No. 96-0725 (1996) relate to the *Nelson* litigation and may be withheld under section 552.103. Regarding the records that Ms. Nelson has seen or had access to, you may withhold all such records that relate to both the *Nelson* and *Teague* litigation unless Ms. Nelson had access to those records after her complaint was filed with the Texas Commission on Human Rights (TCHR). If Ms. Nelson has had access to any of the records that relate to both the *Nelson* and *Teague* litigation after her complaint was filed, those records may not be withheld. Regarding the records that relate only to the *Teague* litigation, it is irrelevant that Ms. Nelson has seen those records; you may withhold those records under section 552.103. The anonymous complaint letters, the TCHR complaint filed by Ms. Nelson, Ms. Nelson's application for employment, and the letter to

Ms. Sarah Shirley must be released. We are unable to state with any greater specificity which documents have been seen by Ms. Nelson that relate to both the *Nelson* and *Teague* litigation which must be released, except for those enumerated above. We trust that the department can make that determination based on the information you have given us in your request for reconsideration.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 100151

Enclosures: Submitted documents

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