



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 14, 1997

Mr. James R. Raup  
McGinnis, Lochridge & Kilgore, L.L.P.  
1300 Capitol Center  
919 Congress Avenue  
Austin, Texas 78701

OR97-0800

Dear Mr. Raup:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37595 (formerly RQ-691).

Austin Independent School District (the "district") received a request for information relating to student allegations of sexual harassment. The request came from the attorney who states that he is representing the students who made the allegations. The parents of the students signed releases to allow the attorney to obtain the information. You assert that the information at issue is excepted from disclosure pursuant to the statutory predecessors of sections 552.102, 552.103, and 552.108 of the Government Code.<sup>1</sup> You also asserted the statutory predecessor to section 552.103(a), the litigation exception, but as you inform this office that the underlying litigation has concluded, it appears that this exception is inapplicable.

You claim that releasing the records at issue implicates the privacy interests of the individual accused of the harassment. The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in sections 552.101 and 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no

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<sup>1</sup>We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

legitimate public concern. *Industrial Found. Of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). 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 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.* at 525.

The court in *Ellen* did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity. However, the court held that the public possesses a legitimate interest in full disclosure of the facts surrounding employee discipline in this type of situation. *Id.* at 525. We believe that there is a legitimate public interest in the identity of a public employee accused of sexual harassment in the workplace and the details of the complaint, regardless of the outcome of the investigation. See Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is generally narrow). Thus, in this situation the information at issue may not be withheld on the basis of the accused individual's privacy interest. Since the requestor represents the alleged victims, the information at issue may not be withheld from the requestor on the basis of the victims' privacy interests.<sup>2</sup>

Some of the documents submitted to this office are reports of the district's police department.<sup>3</sup> Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime" and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). In Open Records Decision No. 612 (1992) at 3, this office stated that "[w]e see no reason for distinguishing the offense and arrest records of a university campus police department from those of police departments generally." We agree that section 552.108 is applicable to the submitted police records.<sup>4</sup>

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<sup>2</sup>We note that this office was initially informed that the requestor represented the parents of the alleged victims. The requestor informed this office he represented the alleged victims.

<sup>3</sup>We note that records maintained by a law enforcement unit and that were created by the law enforcement unit for purposes of law enforcement are not education records. 20 U.S.C. § 1232g(a)(4)(B)(ii).

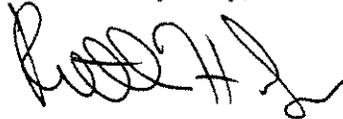
<sup>4</sup>We note, however, that the type of information that is considered to be front page offense report information is usually public. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559

Other records at issue are "education records" under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. "Education records" are records that (1) contain information directly related to a student; and (2) are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). FERPA denies federal funds to an educational agency or institution if it has a policy of denying parents the right to inspect and review the "education records" of their children. 20 U.S.C. § 1232(g). The requestor has apparently provided the appropriate authorization for release forms. Information concerning these students may not be withheld from disclosure pursuant to any of the exceptions you assert. Such information must be released pursuant to the FERPA access provisions.

FERPA also denies federal funds to an educational agency or institution that has a policy or practice of releasing a minor student's education records without the proper consent of a minor student's parents. *Id.* Some of the records submitted to this office contain information about students other than those students discussed above. This information must be withheld from disclosure under FERPA. We have marked sample documents showing the type of information that must be withheld from disclosure.

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,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 37595 (formerly RQ-691)

Enclosures: Submitted documents

cc: Vella M. Fink  
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(w/o enclosures)