



February 17, 1999

Ms. Julie B. Ross
Haynes & Boone
201 Main Street
Suite 2200
Fort Worth, Texas 76102-3126

OR99-0481

Dear Ms. Ross:

You ask this office to reconsider our ruling in Open Records Letter No. 98-2699 (1998). Your request for reconsideration was assigned ID# 122287.

The City of Harlingen (the "city") received two requests for information relating to the requestor's employment with the city. In Open Records Letter No. 98-2699 (1998), we ruled that, pursuant to section 552.103 of the Government Code, the city could withhold only those documents at issue to which the requestor had not previously had access. ORL 98-2699 at 3. Because the requestor authored the memorandum dated February 22, 1998, we concluded that the city could not withhold this document pursuant to section 552.103. *Id.* Additionally, we concluded that the February 22 memorandum was not excepted from disclosure under section 552.101 of the Government Code. *Id.*

You have resubmitted to this office a document titled "Statement of Fact" and labeled Exhibit 3. This is the document that we referred to on page 3 of Open Records Letter No. 98-2699 (1998) as "the February 22, 1998 memo from Mr. Rodriguez." As noted above, we concluded that this document is not excepted from disclosure under section 552.101. You refer to this document as the "February 2, 1998 'Statement of Fact.'" Please note that the requestor signed and dated this document on February 22, 1998, not February 2, 1998. Your request for reconsideration asks that we consider your section 552.101 claim for this document.

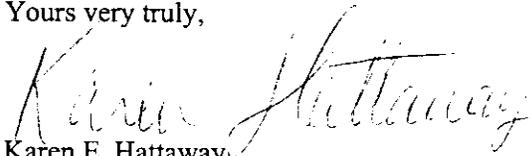
For the following reasons, we affirm our conclusion in Open Records Letter No. 98-2699 (1998) that Exhibit 3, the February 22, 1998 Statement of Fact authored by Mr. Rodriguez, is not excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You contend that the circled portions of Exhibit 3 are excepted from disclosure under section 552.101 conjunction with the doctrines of false-light privacy and common-law privacy. The

Texas Supreme Court has held that false-light privacy is not an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). In addition, in Open Records Decision No. 579 (1990), the attorney general determined that the statutory predecessor to section 552.101 did not incorporate the common-law tort of false-light privacy, overruling prior decisions to the contrary. Open Records Decision No. 579 at 3-8 (1990). Thus, the truth or falsity of information is not relevant to our consideration of whether information must be publicly disclosed under the Open Records Act.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The circled information in Exhibit 3 is not the type of information considered to be highly intimate and embarrassing. *Id.* at 683. Furthermore, this office has consistently held that information relating to a public employee's job performance is of legitimate public interest and is not protected by the common-law right to privacy. *See, e.g.*, Open Records Decision No. 473 (1987) (release of public employee's performance evaluation does not violate employee's common-law right to privacy even if evaluation is poor and highly subjective), 470 (1987) (public employee's job performance does not generally constitute his private affairs). Therefore, Exhibit 3 is not excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy.

If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 122287

Enclosures: Submitted documents

cc: Mr. Arnold Rodriguez
1910 North 8th Street
Harlingen, Texas 78550
(w/o enclosures)