



March 22, 1999

Ms. Helen K. Bright
Office of General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701

OR99-0849

Dear Ms. Bright:

You ask 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# 123047.

The University of Texas at Austin (the “university”) received two requests for documents that relate to the requestor. You state that you have already provided the requestor with his personnel file and other documentation relating to his employment relationship with the university. You contend that the remaining documents are excepted from disclosure pursuant to section 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

The documents at issue relate to allegations of sexual harassment. You contend that these documents are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. The common-law right of privacy is incorporated into the Open Records Act by section 552.101. For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court held 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. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common-law privacy to the files of a sexual

harassment investigation. 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.*

According to *Ellen*, the public has a legitimate interest in documents that adequately summarize sexual harassment allegations and the results of investigations into those allegations. *See id;* see also Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). Therefore, in this case we conclude the requestor is entitled to copies of the submitted documents with the identities of the alleged victims and witnesses redacted. We have marked the identifying information that must be redacted from the documents.

You also contend that portions of the submitted documents are excepted from disclosure pursuant to sections 552.026 and 552.114 because they pertain to university students. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

"Education records" under FERPA are records that

- (i) contain information directly related to a student; and
- (ii) 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). Prior to releasing such records to the public, FERPA requires the university to delete information from the records to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). We

believe that redacting the identifying information discussed above will also satisfy the requirements of FERPA. Therefore, with the exception of the information we have marked, the university should release the submitted documents to the requestor.

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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 123047

Enclosures: Marked documents

cc: Mr. Stephen C. Stappenbeck
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(w/o enclosures)