



June 5, 2001

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2001-2348

Dear Mr. Casas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148043.

The City of San Antonio (the "city") received a request for "all documents related to all EEO Complaints . . . filed [by a particular individual] under the City of San Antonio's EEO complaint procedures." You have provided most of the information to the requestor, but you have redacted certain portions of the information, which you claim are excepted from disclosure under section 552.101 of the Government Code in conjunction with *Morales v. Ellen*, 840 S.W.2d 519 (Tex.App.-El Paso 1992, writ denied). We have considered the exception you claim and reviewed the submitted information.

Under section 552.301(b) of the Government Code, a governmental body must ask for an attorney general's decision no later than the tenth business day after the date of receiving a written request. It appears from the documents submitted to this office that the department received the request for information on March 7, 2001. You did not request a decision from this office until April 2, 2001. Consequently, you failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

To overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990,

no writ); *see* Open Records Decision No. 630 (1994). You argue that some of the requested information is confidential under section 552.101 in conjunction with *Morales v. Ellen*, 840 S.W.2d 519 (Tex.App.–El Paso 1992, writ denied). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or implicates the privacy interest of a third party. *See* Open Records Decision No. 150 (1977). Accordingly, we will address your claimed exception.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses judicial decisions, including *Morales v. Ellen*, which was decided on the basis of common law privacy. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* 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. 540 S.W.2d at 685.

In *Morales v. Ellen*, 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.*

In this case, you have redacted the identity of several individuals from the requested documents. We agree that some of the information that you have marked is protected from disclosure by common law privacy and must therefore be withheld under section 552.101 of the Government Code. On the other hand, some of the information that you have marked is not so protected. Thus, we have marked the redacted information that you must release. In addition, we have marked several other pieces of information within Exhibit B that tend to identify particular witnesses and must also be withheld under section 552.101. And because the requestor is the complainant in the sexual harassment investigation, we agree that, in this instance, her identifying information is not protected by common law privacy. *See* Gov’t Code § 552.023(a) (person has special right of access to information held by a governmental body that relates to the person and is protected from disclosure by laws intended to protect that person’s privacy interests).

Next, we note that section 552.117 may also apply to some of the submitted information. Section 552.117 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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or 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 city must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The city may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. We have marked a sample of the information that must be withheld if the proper elections were made.

If the employees did not elect to withhold their social security numbers in accordance with section 552.024, those numbers may still be protected under section 552.101. A social security number is excepted from required public disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). On the other hand, if the social security number that you redacted was not obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990, then it is not confidential under the federal Social Security Act and may not be withheld under section 552.101.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services Commission 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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 148043

Encl. Submitted documents