



January 28, 2002

Mr. Dennis P. Duffy
University of Houston System
311 East Cullen Building, Suite 212
Houston, Texas 77204-2028

OR2002-0397

Dear Mr. Duffy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157832.

The University of Houston System (the "system") received a request for the requestor's personnel documents including a complaint filed by a student. You state that some responsive information has been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that, with the exception of the student complaint, you have not submitted information concerning the requestor's personnel documents, nor have you indicated that you seek to withhold any such information. Therefore, if such information exists, we assume you have already released it to the requestor. If you have not released this information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

You argue that the submitted information is excepted from disclosure under section 552.101. The common law right of privacy is incorporated into the Public Information 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 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*, 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 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.*

When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. You state that you have released to the requestor documents which you represent comprise an adequate summary of the investigation into alleged sexual harassment. Because the released summary adequately serves the public interest in the information at issue, we conclude that the remaining documents submitted for our review are excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy. As we are able to resolve the matter under section 552.101, we do not address the other claimed exception.

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 Texas Building and Procurement 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 157832

Enc. Submitted documents

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(w/o enclosures)