



April 3, 2002

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
1500 Marilla, 7DN
Dallas, Texas 75201

OR2002-1645

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160851.

The City of Dallas Marshall's Office (the "city") received a request for videotape recordings made in a particular detention facility on a specified date. The requestor also sought names of personnel who had contact with the requestor's client as well as any records of complaints and disciplinary action concerning those personnel. You state that most of the information will be released to the requestor but claim that portions of the submitted responsive complaint are excepted from disclosure under section 552.101 of the Government Code in conjunction with principles of common law privacy. We have considered the exception you claim and reviewed the submitted information.

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 Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (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. 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.

You contend that because the submitted complaint involves allegations of sexual harassment, the identities of the victims must be withheld. We disagree. The submitted complaint alleges official misconduct perpetrated against detainees rather than employees. Under these circumstances we find that a sexual harassment analysis would be inappropriate. *See Soto v. El Paso Nat. Gas*, 942 S.W.2d 671, 677-78 (Tex. App.—El Paso 1997, writ denied) (necessary element of both quid-pro-quo and hostile-work-environment sexual harassment claim is that victim is employee). Furthermore, having reviewed the complaint, we conclude that the identities of the victims are not protected by common law privacy. *Cf. Open Records Decision No. 393 at 2-3 (1982)* (in cases of serious sexual assault identity of victim is protected). Consequently, the submitted information must be released in its entirety.

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).

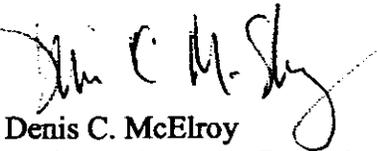
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 160851

Enc. Submitted documents

c: Mr. Edward Gray
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(w/o enclosures)