



May 23, 2002

Mr. David L. Hay  
Information Coordinator  
Dallas County Community College District  
701 Elm Street  
Dallas, Texas 75202-3299

OR2002-2782

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163340.

The Dallas County Community College District (the "district") received three requests for copies of information pertaining to a specified sexual harassment investigation. The requestor also asks the district several questions in his request. We note that the Public Information Act does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990). You state that you have provided the requestor with a document entitled "Summary of Findings." You claim, however, that the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the information is subject to section 552.022 of the Government Code. Section 552.022 provides that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[;]

Gov't Code § 552.022(a)(1). The information constitutes a completed sexual harassment investigation that must be released under section 552.022(a)(1), unless it is confidential under other law or is excepted from disclosure under section 552.108 of the Government Code. Since the district claims that the information is excepted from disclosure pursuant to section 552.101 of the Government Code, we address that claim.

You claim that the information is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.<sup>1</sup> Information is protected from disclosure under the common-law right to privacy 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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. *See Ellen*, 840 S.W.2d at 525. 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. *See id.* 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. *See 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.* Therefore, when there is an adequate summary of an 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. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements.

Although information relating to an investigation of a sexual harassment claim involving a public employee may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. *See Open Records Decision Nos.* 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by the common-law right to privacy.

dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow); *see also Ellen*, 840 S.W.2d at 525.

Based on our review of your arguments and the information at issue, we conclude that the information that the district has already provided to the requestor, together with the accused's statement of questions and responses, comprises an adequate summary of the investigation. *See id.* at 525-26. Thus, we conclude that the district must withhold the remaining information, which is not part of this summary, from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. We note that portions of the accused's statement of questions and responses constitute identifying information of the victims of the alleged sexual harassment. Accordingly, we conclude that the district must withhold from disclosure the identifying information of the victims that we have marked in the accused's statement of questions and responses pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We also note that the accused's statement of questions and responses contains information that is subject to the Family Educational Rights and Privacy Act ("FERPA"). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *See id.* § 1232g(a)(4)(A).

Information must be withheld from disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See Open Records Decision Nos. 332 (1982), 206 (1978)*. This includes information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See Open Records Decision No. 224 (1979)*. Based on our review of the remaining portions of the accused's statement of questions and responses, we conclude that some of this information constitutes personally identifiable information contained in a student's education records. Accordingly, we conclude that the district must withhold from disclosure the information that we have marked in the accused's statement of questions and responses pursuant to FERPA. *See Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978)*.

In summary, the district must withhold from disclosure the identifying information of the victims that we have marked in the accused's statement of questions and responses pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The district must withhold from disclosure the information that we have marked in the accused's statement of questions and responses pursuant to FERPA. The district must release the remaining portions of the accused's statement of questions and responses to the

requestor. The district must withhold the remaining information pursuant to section 552.101 in conjunction with the common-law right to privacy.

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).

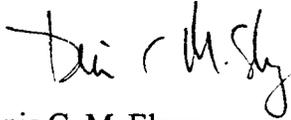
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is written in a cursive style with a large initial "D" and "M".

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/RJB/seg

Ref: ID# 163340

Enc. Marked documents

cc: Mr. Orson Edmond  
7319 Lost Canyon  
Dallas, Texas 75249  
(w/o enclosures)