



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

October 22, 2003

Mr. Bill Crow  
Corporate Counsel  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298-2449

OR2003-7556

Dear Mr. Crow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189760.

The San Antonio Water System ("SAWS") received a request for records pertaining to a supervisor who was disciplined. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

In Open Records Letter No. 2003-5004 (2003), we ruled on information related to an investigation of alleged sexual harassment. To the extent the information responsive to the instant request is the same information previously ruled upon, SAWS may rely on our decision in Open Records Letter No. 2003-5004 (2003). Thus, assuming the four criteria for a previous determination as set forth in Open Records Decision No. 673 (2001) have been met, you must release or withhold the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (criteria of previous determination regarding specific information previously ruled on). To the extent that any of the submitted information was not the subject of the ruling in Open Records Letter No. 2003-5004 (2003), we will address your arguments.

You claim that the submitted information in Exhibits A-1, A-2, A-3, B, and C is excepted under sections 552.101 and 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial*

*Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

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*. 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 applied the common-law right to privacy to an investigation of allegations of sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. See *id.* at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public’s interest in the matter. *Id.* The court further held, however, that “the public does 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 accordance with *Ellen*, with respect to investigations of sexual harassment, this office typically has required the release of a document analogous to the conclusions of the board of inquiry in *Ellen*, but has held that a governmental body must withhold both the identities of victims and witnesses of alleged sexual harassment and any information that would tend to identify such a victim or witness. See also Open Records Decision Nos. 393 (1983), 339 (1982).

Because the redacted memorandum released pursuant to the ruling in Open Records Letter No. 2003-5004 (2003) adequately serves the public interest in the information at issue, we conclude that the additional related documents in Exhibits A-1, A-2, A-3, B, and C are excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy.<sup>1</sup>

---

<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments.

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 Dep't of Pub. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 189760

Enc. Submitted documents

c: Mr. Brian Collister  
WOAI-TV  
1031 Navarro  
San Antonio, Texas 78205  
(w/o enclosures)