



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2006

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2006-06177

Dear Mr. West:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 251242.

The Texas Department of Criminal Justice (the "department") received a request for all records pertaining to a named individual. You state that the department is releasing a portion of the information at issue with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ You also state that the department will redact social security numbers under section 552.147 of the Government Code.² You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹ Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

² We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this officer under the Act.

Initially, you inform us that a portion of the responsive information was the subject of a previous ruling from this office. In Open Records Letter No. 2005-10937 (2005), this office determined that, with the exception of basic information, three of the submitted reports were excepted from disclosure pursuant to section 552.108(a)(2). You state that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met.³ Accordingly, we conclude that the department must continue to rely on our decision in Open Records Letter No. 2005-10937 with respect to the information that was previously ruled upon. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the common law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy protects the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

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. 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. *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.

³ The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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 an investigation, the summary and any statements of the person under investigation 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.

The submitted information contains adequate summaries of investigations into sexual harassment allegations and statements of the accused individuals. We conclude that, under *Ellen*, the department must release the marked summaries and the statements of the accused. However, prior to releasing these documents in accordance with section 552.101 and the holding in *Ellen*, the department must redact the information we have marked that identifies any victims and witnesses. Accordingly, the department must withhold the information we have marked in the adequate summary and statements of the accused pursuant to section 552.101 in conjunction with common law privacy and the holding in *Ellen*. The department must withhold the remaining information under section 552.101 and the holding in *Ellen*.

We note that portions of the remaining information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(3) excepts from public disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current and former employees of the department, regardless of whether the employees complied with section 552.1175. Gov't Code § 552.117(a)(3). We have marked the information the department must withhold pursuant to section 552.117(a)(3).

In summary, the department must continue to rely on our decision in Open Records Letter No. 2005-10937 with respect to the information that was previously ruled upon. Except for the information which we have marked pursuant to sections 552.101 and 552.117 of the Government Code, the department must release the marked adequate summaries and statements of the accused pursuant to section 552.101 of the Government Code in conjunction with common law privacy and the holding in *Ellen*. The remaining information must be withheld under section 552.101 of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/eb

Ref: ID# 251242

Enc. Submitted documents

c: Mr. Benjamin I. Aguilar
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Huntsville, Texas 77340
(w/o enclosures)