



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 9, 1993

Ms. Tamara Armstrong  
Assistant County Attorney  
Travis County Courthouse  
P.O. Box 1748  
Austin, Texas 78767

OR93-506

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18237.

The Travis County Sheriff's Department (the "department") has received a request for information relating to disciplinary action taken against certain department employees. Specifically, the requestor seeks:

1. The audiotape of a conversation between Lt. Jamie Page and officer Stan Roper that occurred between 7-8 p.m. on Oct. 30.
2. Any documents relating to the disciplinary action taken against these two officers.

You have submitted the requested information to us for review and claim that it is excepted from required public disclosure by section 3(a)(1) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under section 3(a)(1) if it meets the criteria articulated for common-law privacy by the Texas Supreme Court in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and it is of no legitimate concern to the public. Although information relating to disciplinary actions against public employees may be highly intimate or embarrassing,

the public generally has a legitimate interest in knowing the reasons why such actions were taken. Open Records Decision No. 444 (1986). In Open Records Decision No. 579 (1990), this office held that common-law privacy did not apply to witness names and statements regarding allegations of sexual misconduct.

Recently, however, the court in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. -- El Paso 1992, writ denied), addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files at issue in *Ellen* contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Id.* The court held that the nature of the information, *i.e.* the names of witnesses and their detailed affidavits regarding allegations of sexual harassment, was exactly the kind specifically excluded from disclosure under privacy doctrine as described in *Industrial Foundation*. *Id.* 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.*<sup>1</sup>

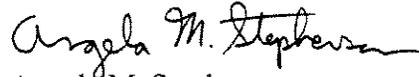
You have submitted to us for review a tape recording of the incident that prompted the sexual harassment investigation (Exhibit A) and a memorandum dated November 13, 1992, regarding "Disciplinary Action Recommendation" (Exhibit B), which constitutes the final action concerning the complaint of sexual harassment. Consistent with the *Ellen* court's holding, we conclude that Exhibit B must be released in its entirety, as it does not contain any information identifying the complainant or witnesses. The tape recording, however, does reveal the identities of the complainant and of the witnesses to the incident, as well as intimate details concerning the complainant's personal life. Furthermore, as was the case in *Ellen*, release of Exhibit B discloses sufficient information regarding the investigation to serve the public's interest. Therefore, in accordance with the *Ellen* decision, the tape recording must be withheld from disclosure under section 3(a)(1) of the Open Records Act.

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<sup>1</sup>Although the *Ellen* court recognized that the person accused of misconduct may in some instances have a privacy interest in information contained within investigatory files, we think in this case the public's interest in disclosure of the information outweighs the accused's privacy interest. *See Ellen*, 840 S.W.2d at 525.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson  
Assistant Attorney General  
Opinion Committee

AMS/GCK/jmn

Ref.: ID# 18237  
ID# 18270

cc: Mr. Roland Martin  
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