



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1994

Mr. Sam A. Lindsay
City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR94-243

Dear Mr. Lindsay:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 25077.

The City of Dallas (the "city") has received a request for information relating to a sexual harassment investigation. Specifically, the requestor seeks "copies of all reports, interviews, statements, memos, and other documents contained in the files at City Hall regarding the internal investigations that were conducted into allegations of sexual harassment involving city employees John Ware and Dennis Martinez." You advise us that some of the requested information will be released, namely, the sixteen-page final investigation report, a legal opinion of the city attorney, a letter of allegations against Mr. Martinez, and an investigation of alleged abusive behavior with the names of complainants and witnesses deleted. In addition, you intend to release Mr. Martinez's response to the allegations and an audio tape of Mr. Martinez's interview with the investigators. However, you seek to withhold the remaining information, which you have submitted to us for review, under section 552.101 of the Government Code.

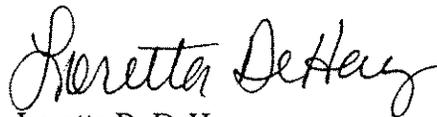
Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the information submitted to us for review is protected by the doctrine of common-law privacy as applied in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files in *Ellen* contained individual witness and victim 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. 840 S.W.2d 519.

The court held that the nature of the information, *i.e.*, names of witnesses and detailed affidavits regarding allegations of sexual harassment, was exactly the kind specifically excluded from disclosure under the privacy exception as described in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). *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.* We think the holding in *Ellen* is controlling on the documents at issue in this case.

We have examined the information that you seek to withhold under section 552.101 and conclude that the city must withhold it from required public disclosure under section 552.101 of the Government Code in conjunction with the court's holding in *Ellen*. Although you state that Mr. Martinez has previously released his response to the allegations, which you also intend to release in its entirety, we have no indication that the complainants' have waived common-law privacy protection for their identities.¹ You must therefore withhold the identities of the complainants that are contained in Mr. Martinez's response to the allegations. For your convenience, we have marked the type of information you must withhold under section 552.101 of the Government Code. In addition, you must remove any reference to the complainants' identities prior to releasing the audio tapes of Mr. Martinez's interview with the investigators.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

¹We note that the names of the complainants are referenced in an article about Mr. Martinez in the Dallas Observer, which you submitted to this office with your request for a ruling. See Laura Miller, *Sex and City Hall*, Dallas Observer, Mar. 3-9, 1994, at 12-19. However, we cannot assume that the complainants have waived their common-law privacy interests with respect to the information that the city holds, especially in light of the statement in the article that "none of the women would agree to be interviewed for [the] story." *Id.* at 17. Moreover, section 552.352 of the Government Code prohibits the city from releasing confidential information in its possession, despite the fact that some of the information has been obtained by the Dallas Observer from other sources.

Enclosures: Marked documents

Ref.: ID# 25077
ID# 25091

cc: Ms. Laura Miller
The Dallas Observer
P.O. Box 190289
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(w/o enclosures)