



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Riley J. Simpson
City Attorney
P.O. Box 111
Copperas Cove, Texas 76522

OR95-856

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32557.¹

The Copperas Cove Police Department (the "department") received several open records requests from two of its officers concerning certain internal affairs investigations. This ruling pertains to the open records requests submitted by Lt. Howard and Sgt. Lawrence dated April 10, 1995 and April 8, 1995, respectively (originally assigned ID# 32920 by this office), and the request made by Sgt. Lawrence dated March 16, 1995 (assigned ID# 32557).

You characterize the records at issue requested by both Lt. Howard and Sgt. Lawrence as pertaining to an investigation of alleged sexual harassment within the department. On May 31, 1995, this office acknowledged the receipt of your request for an open records decision regarding these records and asked that you submit to us copies of those records. To date, we have not received your reply. It is also unclear to this office whether the records sought by Sgt. Lawrence in his March 16, 1995 request stem from or should be considered a part of the internal affairs investigation that was the subject of the records requested by both Sgt. Lawrence and Lt. Howard. For purposes of this ruling, we will assume that the two sets of open records requests are for records pertaining to the same internal affairs file. Because you did submit, at our request, a copy of the records requested by Sgt. Lawrence in his March 16 request, our discussion of the extent to which those records are subject to required public disclosure will also apply to the internal affairs file as a whole.²

¹This ruling also address your request for an open records decision that was assigned ID# 32920.

²For purposes of this ruling, we assume that the "representative sample" of records we have reviewed is truly representative of the requested records as a whole. See Open Records Decision

As noted above, the records at issue pertain to alleged sexual harassment within the department. 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. 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 names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Ellen* at 525. However, the court ordered the release of the affidavit of the person under investigation. *Id.* The *Ellen* court also ordered the disclosure of the summary of the investigation with the identities of the victims and witnesses deleted from the documents, noting that the public interest in the matter was sufficiently served by disclosure of such documents and that in that particular instance "the public [did] not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements." *Id.*

It is not clear to this office, however, whether or to what extent the department has released details of the alleged sexual harassment to the public.³ Consequently, we have no basis for concluding that the department has sufficiently informed the public of the details of the allegations. In the instant case, this office feels compelled to follow the *Ellen* decision with regard to victims' and witnesses' identities; accordingly, the department must withhold the identities of these individuals.⁴ However, the court in *Ellen* did not reach the issue of whether the public employee who was accused of the harassment had any inherent right of privacy to his identity or the content of his statement and we decline to extend such protection to these individuals here. As noted above, sexual harassment by public employees may constitute official oppression punishable as a Class A misdemeanor. *See also Bryson v. State*, 807 S.W.2d 742 (Tex. Crim. App. 1991). We believe there is a legitimate public interest in the identity of public employees accused of sexual harassment in the workplace. *See, e.g., Open Records Decision*

(Footnote continued)

No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other information contained in other records to the extent that those records contain substantially different types of information than that submitted to this office.

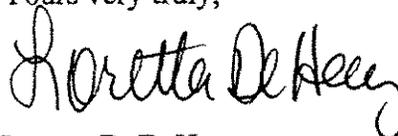
³For purposes of this ruling we determine only the extent to which the requested records must be released to the general public, as opposed to specific officers within the department.

⁴We note that you previously informed the victim about the open records request and asked her to contact either your office or the attorney general if she wished to assert any privacy interest in this information. To date, this office has received no such notification from the victim. If you or the department determines that the victim has in fact waived her privacy interests, the department may release the requested information in its entirety.

Nos. 484 (1987), 400 (1983). Consequently, the department must release all remaining information contained in the requested records because of the clear public interest in this information. *Cf.* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 32557

Enclosures: Submitted documents

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