



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR96-0454

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. The request was assigned ID# 38830.

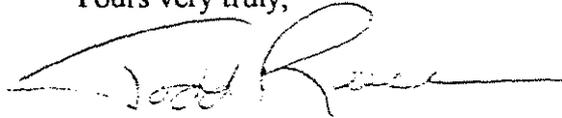
The City of Austin ("the city") recently received an open records request for copies of all statements pertaining to a sexual harassment complaint at the city's Water and Wastewater Department. The city contends that the requested information must be withheld from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the holding 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 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. *Ellen*, 840 S.W.2d 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.*

Based on *Ellen* and prior decisions of this office, *see e.g.* Open Records Decision Nos. 393 (1983), 339 (1982), the city must withhold the identities of the witnesses to the alleged harassment and the identity of the alleged victim, and any information which would tend to identify the witnesses or victim, in each of the submitted documents.¹ We have marked the documents to indicate which information must be withheld. However, we find that, in this instance, the details of the personal statements of the witnesses and the victim do not significantly go beyond what is contained in the statement by and investigation reports of the interview with the accused public employee. Therefore, the victim's and witnesses' statements, except for that information which either identifies or tends to identify the victim and witnesses, may not be withheld under section 552.101.

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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/ch

Ref.: ID# 38830

Enclosures: Marked documents

cc: Mr. Greg Powell
Business Manager
American Federation of State, County, and
Municipal Employees, Local 1624
1106 Lavaca Street, Suite 100
Austin, Texas 78701
(w/o enclosures)

¹We note that the common-law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance, *see* Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978), and, therefore, the identity of the alleged offender may not be withheld from the requestor.