



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

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

OR96-1301

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# 100623.

The City of Austin ("the city") recently received an open records request for the complete file pertaining to a sexual harassment complaint at the city's Water and Wastewater Department. The city contends that the identities of the witnesses and any information which would tend to identify the witnesses must be withheld from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy and the holding in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso, 1992, writ denied).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information must be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 by the Texas Supreme Court 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). Those criteria are (1) the information is highly intimate or embarrassing *and* (2) it is of no legitimate concern to the public. *Id.* at 685.

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 victim and the witnesses to the alleged harassment, and any information which would tend to identify the victim or the witnesses, in each of the submitted documents.¹ We note, however, 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 accused public employee's statement, investigation reports of the interview with the employee, and the Report of Findings. Therefore, the victim's and witnesses' statements, except for that information which either identifies or tends to identify the victim or the witnesses, may not be withheld under section 552.101. We have marked a sampling of the documents to indicate the type of information which must be withheld.

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,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

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 under section 552.101.

RTR/rho

Ref.: ID# 100623

Enclosures: Marked documents