



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 11, 1996

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

OR96-2371

Dear Mr. Steiner:

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# 102519.

The City of Austin (the "city") received a request for "all the records of my Supervisor's Desk file all records or statment[sic] that have been generated from my investigation from Aug 8, 1996 to Sept 17, 1996." The city seeks to withhold portions the requested information based on section 552.101 of the Government Code. You enclose marked representative samples of the information the department seeks to withhold.<sup>1</sup>

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, we observe that 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 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.*

---

<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

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.*

To the extent, if any, that some documents have previously been disclosed to the requestor which contain the identities of witnesses or victims in sexual harassment matters, the identities of the witnesses and victims are excepted under *Ellen*, common-law privacy, and section 552.101. Open Records Decision No. 400 (1983) at 2 (information that is confidential by law may not be released even if previously disclosed). Additionally, aside from the fact that the handwritten statements comport with the typewritten statements, you must withhold the handwritten statements if their release would tend to reveal the identity of witnesses. Open Records Decision No. 434 (1986) at 2. However, you may not withhold information under section 552.101 on the basis of protecting a requestor’s own common-law privacy interests. Open Records Decision No. 481 (1987) at 4. You must withhold information that would identify victims and witnesses of sexual harassment. We agree that the marked information must be withheld from disclosure.<sup>2</sup> You may not, however, withhold information, if any, that would identify the requestor in this instance.

We are resolving this matter with this 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,

  
Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 102519

Enclosures: Marked documents

cc: Mr. Art Contreras  
P.O. Box 121  
Buda, Texas 78710  
(w/o enclosures)

---

<sup>2</sup>Because we resolve this matter under *Ellen*, we need not address your argument under 552.101 based on the “informer’s privilege.”