



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 4, 1997

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR97-0712

Dear Ms. Calabrese:

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# 104889.

The City of Houston (the "city") received an open records request from a city employee for all documents pertaining to the city's investigation of a sexual harassment complaint filed by the employee. You indicate that the city will make available to the requestor many of the requested documents. You inquire whether certain other documents must be withheld from the requestor in accordance with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

In *Morales v. Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and is of no legitimate concern to the public). 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.

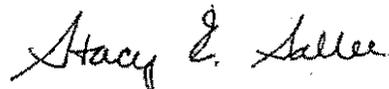
The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment was exactly the kind of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *Ellen* 840 S.W.2d at 525. Further, the *Ellen* court 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.* This particular holding of the court indicates that the content of the witness statements implicated the privacy interests of the witnesses as well as of the victim. We therefore believe that in this instance the witness statements taken during the course of the investigation should not be released to the requestor but rather should be withheld to protect the witnesses' privacy rights.<sup>1</sup> We have marked the types of information the city must withhold in accordance with *Ellen*.

On the other hand, the *Ellen* court ordered the release of the affidavit of the person accused of the harassment, in part because it ruled that he had waived any privacy interest he may have had in the information by publishing a detailed letter explaining his actions and state of mind at the time of his forced resignation. *Id.* 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 the accused individual here. 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 Nos. 484 (1987), 400 (1983). Consequently, the city must release all remaining information pertaining to the allegations, including the alleged harasser's name and statement, 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/RWP/glg

Ref.: ID# 104889

Enclosures: Submitted documents

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<sup>1</sup>We note that because the requestor of the information is in this instance also the victim of the alleged harassment, the requestor has a special right of access to information implicating her own privacy interests. *See* Gov't Code § 552.023. If the city receives a subsequent open records request for the information at issue from any other individual, all information tending to identify the victim must also be withheld in accordance with *Ellen*.