



April 29, 1999

Mr. Raymond D. Martinez
Office of the City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-1182

Dear Mr. Martinez:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124034.

The City of Dallas (the “city”) received an open records request for “a complete copy of the Internal Affairs investigation number 98-343.” You contend the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.108(a) of the Government Code.¹

Because section 552.108(a) is the more inclusive exception, we will discuss it first. Section 552.108(a) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime.” You have not demonstrated, nor does it appear to this office, that the records at issue pertain to a criminal investigation. We therefore conclude that you have not met your burden of establishing that the release of the information at issue would interfere with law enforcement. The city therefore may not withhold any of the requested records pursuant to section 552.108(a).

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You contend that the internal affairs file is made confidential under chapter 57 of the Code of Criminal Procedure, which is entitled “Confidentiality of Identifying Information of Sex Offense Victims.”

¹We note that, in addition to the requested information, you have also submitted to this office the first page from an offense report pertaining to an alleged aggravated sexual assault. You have also submitted an apparently related “Request For Accident Report” form. Neither of these two documents come within the ambit of the current open records request. This office therefore does not address in this ruling whether these two documents are subject to required public disclosure.

Although the internal affairs investigation concerned, among other things, certain allegations of sexual harassment, none of the complaining witnesses may properly be considered a sex offense “victim” for purposes of chapter 57. *See* Code Crim. Proc. art. 57.01(4) (defining “victim”). The provisions of chapter 57 are inapplicable here.

You also contend that the requested records must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy. 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. *See also Industrial Found. 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, supra*, at 525. However, the court ordered the release of the affidavit of the person under investigation, 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.* 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.*

In this instance, however, you have not informed this office as to what extent the city has released details of the alleged sexual harassment to the public. Consequently, we have no basis for concluding that the city has sufficiently informed the public of the details of each of the allegations against the two police officers who were the subjects of the internal affairs investigation.

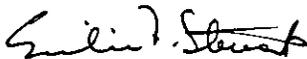
This office feels compelled to follow the *Ellen* decision with regard to the identities of the victims of the sexual harassment and other complaining witnesses; we have marked the types

of information the city must withhold to protect the identities of these individuals.² 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. 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). *See also* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

After reviewing the records at issue, we conclude that pages 31 through 43 of the internal affairs investigation report, the statements of the two police officers who were the subjects of the investigation, and all related disciplinary records constitute an adequate summary of the investigation. The city therefore must release these documents to the requestor.³ The city must withhold, however, individual witnesses statements in accordance with *Ellen*.

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.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/RWP/eaf

Ref.: ID# 124034

encl. Marked documents

²We note that the requestor is one of the complaining witnesses. Consequently, it is unnecessary to withhold this individual's name in this instance because she has a special right of access to such information. *See* Gov't Code § 552.023.

³We have marked a few small portions of these records that must be withheld from the public pursuant to section 552.117(2) of the Government Code.