



September 22, 1999

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

OR99-2660

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127444.

The City of Houston (the "city") received a request for the Office of the Inspector General investigation into the sexual harassment complaint filed against two employees. You claim that portions of the responsive investigative file are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

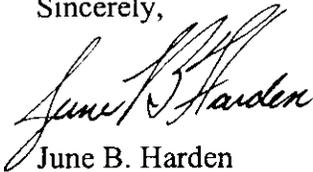
In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit 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.* 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.*

We have reviewed the submitted information and agree that the information you have marked as Exhibit 2 is an adequate summary of the sexual harassment allegations and investigation. When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure.<sup>1</sup> We also find that the public interest in the statements of the alleged harassers outweighs any privacy interest they may have in that information. Therefore, in accordance with *Ellen*, we have marked additional information that must be released to the requestor. The remaining information relating to the sexual harassment investigation must be withheld pursuant to common-law privacy and *Ellen*.<sup>2</sup>

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

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<sup>1</sup>We note, however, that some of the information subject to release may be protected by section 552.117. Section 552.117 exempts from required public disclosure the social security numbers of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

<sup>2</sup>Some of the submitted documents relate to an investigation into the theft of city property. As these documents are not responsive to the request, this ruling does not address the public nature of these documents.

Ref.: ID# 127444

Encl. Marked documents

cc: Ms. Elizabeth Trevino  
Attorney at Law  
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Houston, Texas 77007  
(w/o enclosures)