



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1994

Mr. Robert E. Diaz  
Assistant City Attorney  
City of Arlington  
P.O. Box 231  
Arlington, Texas 76004-0231

OR94-858

Dear Mr. Diaz:

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# 26562.

The City of Arlington (the "city") received an open records request from a former city employee for records pertaining to his termination. You contend that because the requested records concern allegations of sexual harassment, the identity of all witnesses to the alleged harassment, as well as large portions of their statements, come under the protection of common-law privacy and thus must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>1</sup> Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

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 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. 840 S.W.2d 519.

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<sup>1</sup>Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

The court held that the names of witnesses and their detailed affidavits regarding allegations of sexual harassment were exactly the kinds of information specifically excluded from disclosure under the privacy doctrine as described in *Industrial Foundation*. *Id.* 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, it is not clear to this office whether or to what extent the city has released details of the alleged sexual harassment to the public. Consequently, for purposes of this ruling, we will assume that the city has not previously released records that detail all of the allegations. After reviewing the records at issue, we have determined that although the identities of the witnesses who supplied information to the city must be withheld under common-law privacy in accordance with *Ellen*, the city must release all remaining information pertaining to the allegations 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 have marked the documents you submitted to this office to indicate the information that the city must withhold in order to protect the identity of witnesses; all other portions of the requested records must be released.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/RWP/rho

Ref.: ID# 26562

Enclosures: Marked documents

cc: Mr. Cesar DeLeon  
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(w/o enclosures)