



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 21, 1995

Ms. Myra C. Schexnayder
Assistant School Attorney
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR95-187

Dear Ms. Schexnayder:

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# 28303.

The Houston Independent School District (the "district") received an open records request for "a copy of the allegations and documentation involved in" the district's investigation of the requestor's alleged sexual harassment of a district employee. You have submitted to this office for review various records that you contend come under the protection of, among other things, section 552.101 of the Government Code.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. *Id.* at 683-85.

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*

¹Because we resolve your request under section 552.101, we need not address your contentions regarding section 552.111 of the Government Code.

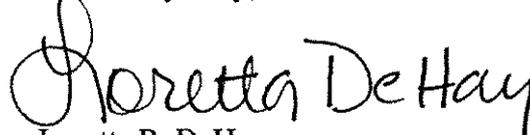
contained individual witness and victim statements, an affidavit given by the individual accused of the misconduct in response to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W. 2d 519.

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, you inform this office that the district has released to the requestor a memorandum dated August 9, 1994, that provides details of the alleged harassment. After reviewing this document, we believe that, in accordance with *Ellen*, the public's² interest in the details of the alleged harassment is sufficiently served by the district's release of this record. Because the requestor has already obtained a copy of this record, the district need not release any additional information in response to the open records request.³

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 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

²This office must view the open records request as one from a member of the general public, rather than from a district employee having a special interest in the information. See Gov't Code § 552.223 (all requests for information shall be treated uniformly "without regard to the position or occupation of the person making the request").

³We note that the memorandum reveals the name of the alleged victim. In the future, the victim's identity must be redacted in accordance with *Ellen*.

LRD/RWP/rho

Ref.: ID# 28303

Enclosures: Submitted documents

cc: Ms. Lydia M. Godfrey
1500 Northwest
Georgetown, Texas 78628
(w/o enclosures)