



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1995

Ms. Betsy Elam  
Joshua City Attorney  
Fielding, Barrett & Taylor, L.L.P.  
3400 Bank One Tower  
500 Throckmorton Street  
Fort Worth, Texas 76102-3821

OR95-504

Dear Ms. Elam:

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# 34118.

The City of Joshua, which you represent, received an open records request for "any signed and/or sworn affidavits which may have played a part in or resulted in the three-day suspension of" a named city police officer. You contend that in order to protect the privacy interests of the complainant, the city must withhold the requested complaint in its entirety pursuant to section 552.101 of the Government Code. 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. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

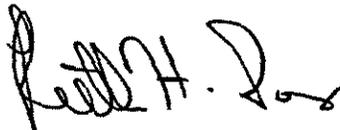
In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files pertaining to an investigation of allegations of sexual harassment. The investigatory files at issue in *Morales v. Ellen* contained individual 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. *Id.* 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*. *Id.* at 525. However, the court ordered the release 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.* at 525.

In this instance, however, it is not clear to this office whether or to what extent the city has previously 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 the allegations against the police officer. Although this office feels compelled to follow the *Ellen* decision with regard to the complainant's identity, we nevertheless recognize the public's legitimate interest in being made aware of the actions of its city officials. We have marked the information the city must withhold to protect the identity of the complainant. All remaining information contained in the complaint 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 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,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/RWP/rho

Ref.: ID# 34118

Enclosures: Marked documents

cc: Ms. Daun Eierdam  
Managing Editor  
The Joshua Tribune  
P.O. Box 1169  
Joshua, Texas 76058  
(w/o enclosures)