

February 1, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Ms. Lan P. Nguyen
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Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121882.

The City of Houston (the "city") received a request for all complaints filed with the Office of Inspector General ("OIG") since January 1, 1998 and a copy of the OIG's sign-in log. You have released the requested complaints to the requestor. However, you claim that some of the names in the sign-in log are excepted from public disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you remark that although not all of the names in the sign-in log are excepted from public disclosure, it is extremely burdensome for the city "to have to segregate the information deemed to be public from the information that is confidential by law in this instance, because that task would require having to go through each name shown on the sign-in book and manually search through each of the 816 investigatory cases presently on hand to determine whether the name would be relevant to those cases, for the purpose of release." The fact that it may be burdensome to provide the information or to submit and label the information at issue to indicate which exceptions apply to which parts of the records does not relieve a governmental body of its responsibility to comply with the Open Records Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with act does not determine availability of information); Open Records Decision No. 497 (1988).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You assert that some of the names are excepted from public disclosure by the informer’s privilege. Texas courts have long recognized the informer’s privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 at 4 (1990). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). Where statements evidence no wrongdoing or violation of law, they are not protected by the informer’s privilege. Open Records Decision No. 549 (1990); *see also* Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by the informer’s privilege).

You explain that the OIG “was established by Executive Order of the Mayor in February 1998, as a central authority to investigate allegations of employee misconduct, both criminal and administrative, concerning City employees.” You have submitted the sign-in sheets containing the names of all individuals who visit the OIG. You have not indicated which of these individuals are informants or explained specifically how certain individuals are informants, that is, what violations of laws these individuals purportedly reported. Gov’t Code § 552.301. Therefore, with the limited information presented to this office, we conclude that you may not withhold any names from the sign-in log under section 552.101 and the informer’s privilege.

Next, you state that the sign-in log contains names of persons who may be a victim or witness to alleged sexual harassment. Thus, you contend that the names of such persons are protected by common-law privacy pursuant to *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied). Information is excepted from disclosure by a common-law right of privacy under section 552.101 if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). Although information relating to the internal investigation of sexual harassment involving

public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519, 525 (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 a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the affidavit of the person under investigation and the summary, stating that the public's interest was sufficiently served by the disclosure of these 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 do not believe that *Ellen* is applicable in this instance. *Ellen* addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The sign-in log is beyond the scope and context of *Ellen*. As you have acknowledged, the information, on its face, does not reveal whether any of the listed individuals are involved in a sexual harassment investigation. You express concern that a requestor can deduce otherwise confidential information by combining it with other information already known to the requestor. Please note that section 552.222 of the Government Code prohibits an inquiry by a governmental body into the motives of a person who requests information. *See A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995) (comptroller may not inquire whether requestor intends to use information it requested to deduce otherwise privileged information because the act precludes factual inquiry into what requestor intends to do with disclosed information); Open Records Decision No. 542 (1990). Thus, you may not withhold any of the names from the sign-in log under common-law privacy and *Ellen*.

Lastly, you argue that some of the names are confidential under section 143.1214(b) of the Local Government Code because they "may reflect identities of a police officer or firefighter who may be involved in a charge of misconduct that was not sustained." Section 143.1214(b) provides in relevant part as follows:

The department shall maintain . . . any document in the possession of the department that relates to a charge of misconduct against a fire

fighter or police officer that the department did not sustain, only in a file created by the department for the department's use. The department may not release those documents to any agency or other person except another law enforcement agency or fire department.

Local Gov't Code § 143.1214(b). Section 143.1214(b) does not apply to the sign-in log because it is not a document "that relates to a charge of misconduct against a fire fighter or police officer that the department did not sustain." Thus, you may not withhold any of the names from the log pursuant to section 143.1214(b). You must release the sign-in log to the requestor.

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.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 121882

Enclosures: Submitted documents

cc: Mr. Robert D. Jackson
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(w/o enclosures)