



May 18, 1999

Mr. Keith Stretcher
City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR99-1373

Dear Mr. Stretcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124226.

The City of Midland (the “city”) received a request for three categories of documents relating to sexual harassment complaints against a former police lieutenant and for the city’s policies on the investigation of such complaints. You inform us that the city does not have documents responsive to items 2 and 3 of the request, and that the city has provided the requestors with the policy documents responsive to item 4 of the request. You have submitted the remaining documents at issue to this office for review. You contend that these documents are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information considered confidential under the common-law right to privacy. Information is protected by the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The documents at issue relate to the city’s investigation of sexual harassment complaints against the former police lieutenant. 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.*

According to *Ellen*, the public has a legitimate interest in documents that adequately summarize sexual harassment allegations and the results of investigations into those allegations, but not in the identities or detailed statements of the victims and witnesses. *See id.; see also* Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). In this case, we conclude that the following pages of the submitted documents constitute an adequate summary of the city's investigation and satisfy the legitimate public interest in the investigation: pp. 1, 4, 5-17, and 23-25. You have highlighted the information on these pages which you contend identifies the alleged victims and witnesses. Although we agree with most of your markings, we have marked some of the highlighted information that does not appear to identify alleged victims or witnesses. After redacting the identifying information from pp. 1, 4, 5-17, and 23-25, you must release these pages to the requestor. You must withhold the remaining documents from disclosure under section 552.101 in conjunction with the common-law right to privacy.¹

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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

¹Because we are able to resolve this matter under section 552.101, we do not address your additional arguments against disclosure. We note, however, that section 552.117(2) protects only peace officers, not all employees of a police department.

Ref: ID# 124226

encl. Submitted documents

cc: Mr. Rick Lopez
The Midland Reporter-Telegram
P.O. Box 1650
Midland, Texas 79702
(w/o enclosures)

Ms. Meta Minton
The Midland Reporter-Telegram
P.O. Box 1650
Midland, Texas 79702
(w/o enclosures)