



September 21, 1999

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR99-2637

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas public Information act. Your request was assigned ID# 127821.

The City of Corpus Christi (the "city") received a request for information relating to a disciplinary matter including the requestor's and another city employee's personnel files. You advise that the requested personnel files are being made available to the requestor. You seek to withhold other information responsive to the request under sections 552.101 and 552.103 of the Government Code.

Section 552.103(a), known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the

governmental body is a party. Open Records Decision No. 588 (1991). You advise that the requested information relates to the requestor's pending appeal to the city's Civil Service Board of his suspension by the city's Department of Human Resources and argue that this pending appeal should be considered "litigation" for purposes of section 552.103(a). We disagree. Section 552.103(a) was intended to prevent the use of the Public Information Act to avoid rules of discovery used in litigation. *See, e.g.*, Attorney General Opinion JM-1048 (1989). Although you argue that the civil service proceeding is a quasi-judicial proceeding, you have not demonstrated that the proceeding is governed by discovery rules which would be circumvented by release of information in response to the request. We do not believe that the civil service proceeding is "litigation" for purposes of section 552.103(a). Consequently, none of the information at issue may be withheld under that provision.

Section 552.101 requires withholding, *inter alia*, information made confidential by judicial decision. 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. *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 Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Ellen* 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.* at 525.

Here the city has released a summary of the investigation to the requestor. In order to comport with the *Ellen* holding, the city must withhold the rest of the information responsive to the request except for the affidavits of the person under investigation, which must be released with the identities of the victims and witnesses redacted. We have marked the submitted documents to indicate those portions of the information which 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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 127821

Encl. Marked documents

cc: Mr. Rolando Ramirez
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(w/o enclosures)