



Office of the Attorney General
State of Texas

March 30, 1992

DAN MORALES
ATTORNEY GENERAL

Honorable Donald W. Allee
City Attorney
City of Pharr
801 Nolana, Suite 202
McAllen, Texas 78504

OR92-129

Dear Mr. Allee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15045.

You have received a request for information relating to an agreement made between the City of Pharr (the "city") and an employee of the city police department. Specifically, the requestor seeks:

1. Copies of the minutes and any resolutions passed by the Civil Service Commission in a meeting of January 21, 1992;
2. A copy of the record of certification and appointment of Anacleto Martinez to the rank of major;
3. Copies of the City Commission minutes and any resolutions passed, pertaining to the matter of Chief Martinez and/or the rank of major in meetings of June 14, 1991, June 18, 1991, and June 25, 1991; and
4. A copy of the contract between Chief Martinez and the City of Pharr wherein certain fringe benefits dealing with special pay provisions are detailed.

You have submitted to us for review a copy of the "COMPROMISE SETTLEMENT AGREEMENT" between the city and Chief Martinez. You claim

that this document is made confidential by its terms. Because you do not comment on the remainder of the requested information, we assume that it has been or will be made available to the requestor. *See* Open Records Decision No. 363 (1983).

Except where specifically authorized to do so by court order or statute, governmental bodies may not enter into agreements to keep information confidential. *See, e.g.*, Open Records Decision Nos. 444, 437 (1986); 425 (1985); 414 (1984). By the same token, a governmental body may not use a contract to invoke section 3(a)(1). Open Records Decision No. 491 (1988). The only exception to this general rule is mandated by article I, section 16 of the Texas Constitution which provides:

No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

The impairment of contract clause of the constitution forbids only laws that operate retroactively on contracts; consequently any contractual confidentiality provisions, such as the one at issue here, that were executed after the enactment of the Open Records Act are without effect. *See* Attorney General Opinion JM-672 (1987).

You claim that the "COMPROMISE SETTLEMENT AGREEMENT" between the city and Chief Martinez, by its terms, excepts the agreement from public disclosure. Paragraph 15 of the agreement provides:

each party shall not disclose the existence of this agreement or any term thereof to any person who is not a party or attorney of a party, unless ordered by a court after notice to all parties or upon filing of a lawsuit

You have indicated that this contract was *not* entered into pursuant to court order. We are not aware of any law which makes this contract confidential. As this contract was entered into *after* enactment of the Open Records Act, the confidentiality provision contained in paragraph 15 is not saved by the impairment of contract clause of the Texas Constitution and is without effect. Accordingly, since you have not raised any exception which would exempt it from disclosure, the "COMPROMISE SETTLEMENT AGREEMENT" may not be withheld from required public disclosure and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-129.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 15045
ID# 15182

cc: Captain Jesse J. Medina
Pharr Police Department
202 East Clark
Pharr, Texas 78577