Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 16, 1994

Mr. Bob Schmidt
Assistant Attorney General
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR94-246

Dear Mr. Schmidt:

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# 24918.

The Office of the Attorney General received an open records request for "all information available regarding the monetary state payments of settlement costs, payments or agreements that in any way obligated the state for" 33 lawsuits listed by the requestor. You indicate that the requestor further clarified that she is seeking access to only the dollar amounts paid and the settlement agreements entered into in these lawsuits. You also indicate that this information is clearly public for four of the lawsuits and that you will make it available to the requestor. However, the remaining 29 cases have confidentiality provisions in either the settlement agreements or the court orders, and you have asked us to determine whether these provisions make the requested information confidential by law and, thus, prohibit you from releasing it under section 552.352 of the Government Code.

A governmental body may not withhold information, including settlement agreements, simply because it has agreed to do so. Open Records Decision No. 444 (1986) at 6. The Open Records Act requires the release of all information collected, assembled, and maintained by a governmental body unless one of the act's specific exceptions protects the information from disclosure. Gov't Code § 552.021; Open Records Decision No. 514 (1988) at 1-2. None of the act's exceptions protects a settlement agreement or any other contract merely because it contains a section in which the parties agree to keep any part of the agreement confidential. Therefore, a confidentiality provision in a settlement agreement, without more, is not enforceable against a governmental body.

On the other hand, section 552.107(2) excepts information from required public disclosure when a court order prohibits its release. Therefore, a governmental body may withhold the amount and terms of a settlement if the court enters an order prohibiting the parties to the agreement or their attorneys from disclosing this information. Open Records Decision No. 415 (1984) at 2.

We conclude that the court orders in four of the lawsuits make confidential the dollar amounts paid and the terms of the settlement agreements in those lawsuits. The court in *Lamoreux v. Texas A&M University* specifically ordered that the release and settlement agreement filed in the case be kept confidential by the parties. In *Feagley v. Waddill*, the court stated that the settlement agreement, which contained a confidentiality provision, was incorporated into the court order. Similarly, in *Gray v. Texas Department of Banking*, the court ordered the settlement, which also contained a confidentiality provision, to be final and binding.[1] The court did not specifically require the parties to keep the settlement agreement confidential or to comply with the settlement agreement in *Wilkins v. University of Houston*. However, the court ordered that the agreed order of settlement, the final judgment, and the order approving attorney's fees be filed under seal, and we think that the court intended to make the settlement agreement confidential. We read these four orders as prohibiting the disclosure of information under section 552.107(2).[2]

We do not believe, however, that the court orders in the 25 other lawsuits prohibit the disclosure of information under section 552.107(2). Most of the court orders you submitted for review say nothing that could be interpreted as ordering the parties to keep the settlement agreement confidential. Furthermore, although the language in the court orders regarding three of the lawsuits is ambiguous, the settlement agreements indicate that the plaintiffs, not the governmental bodies, agreed to keep the terms of the settlement agreements confidential.[3] Finally, the settlement agreement in *Haney v. Mattox* states that the parties are to refrain from disclosing the terms of the agreement "except as required by law." Therefore, although the court order requires the parties to comply with the terms of the settlement agreement, the settlement agreement itself permits the governmental body to release the settlement agreement as required by the Open Records Act.

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[1]We do not consider here the validity of the court orders. We note, however, that rule 76a of the Texas Rules of Civil Procedure places both procedural and substantive restrictions on a Texas court's authority to seal court records, including settlement agreements not filed of record.

[2]We note that none of the submitted records suggest that the Office of the Attorney General asked the court to seal the dollar amounts paid or the settlement agreements. Furthermore, we have been advised that the policy of the Office of the Attorney General is *not* to seek confidentiality for settlement agreements except to the extent required by constitutional or statutory law.

[3]See the court orders in *Reyes v. Amarillo Hospital District*, *Spalding v. Hermann*, and *Hooper v. Hermann*.

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 contact this office.

Yours very truly,

Margaret A. Roll

Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 24918

Enclosures: Submitted documents

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(w/o enclosures)