



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1994

Mr. E. Allen Taylor, Jr.
Fielding, Barrett & Taylor
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR94-403

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 26593.

The City of Mansfield (the "city"), which you represent, has received three requests for information relating to a certain settlement agreement. Specifically, the requestors seek the amount of the settlement, all records relating to the terms of the settlement, notice of changes in city or police department policy resulting from the settlement, and copies of any other open records requests received relating to the settlement. You seek to withhold a document titled "Compromise and Settlement Agreement," which you have submitted to us for review, and claim that sections 552.103(a) and 552.107 of the Government Code except it from required public disclosure. You state that "all parties to this request acknowledge that a copy of the actual Compromise and Settlement Agreement entered into between the City and the Willingham family is the document actually sought." However, because you do not comment on the remaining information initially requested, we presume that, to the extent the requestors have not so modified their original requests, the information will be made available. *See* Open Records Decision No. 363 (1983).

Section 552.103(a) of the Government Code 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 requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding to which the state or political subdivision is or will be a party. *See* Open Records Decision Nos. 551 (1990) at 3; 132 (1976) (section 552.103(a) does not apply when the particular political subdivision claiming the exception is not a party nor expects to be a party to the suit). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 (1986) at 4.

You advise us that the city and representatives of a party suing the city have entered into a settlement of the claims which might have been made against the city. You also advise us that the settlement agreement includes a confidentiality clause that prohibits the parties to the agreement from disclosing the specific terms and conditions of the settlement. In support of your section 552.103(a) claim, you contend that release of the settlement agreement would entitle the party opposing the city to sue the city for damages for breach of this nondisclosure provision. As a general matter, governmental bodies are prohibited from entering into contracts to keep information confidential unless expressly authorized by law to do so. *See, e.g.,* Open Records Decision Nos. 514, 491 (1988); 484, 479 (1987). We are unaware of any law that authorizes the city to enter into an agreement to make the information at issue here confidential. Moreover, we believe it would be inimical to the purposes underlying the Open Records Act and inconsistent with prior decisions of this office to permit the city to withhold the requested information under section 552.103(a) merely because it anticipates litigation with respect to breach of a contract provision that the city included in the contract without express statutory authority. Essentially, your reading of the Open Records Act would permit governmental bodies to withhold information under section 552.103(a) on the basis of a contract provision into which the governmental body is prohibited from entering. We conclude that the city may not withhold the requested information under section 552.103(a) of the Open Records Act.

You also claim that section 552.107 excepts some of the requested information from required public disclosure. Section 552.107 excepts information from required public disclosure if:

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or

(2) a court by order has prohibited disclosure of the information.

This section has two distinct aspects: Subsection (1) protects information within the attorney-client privilege, and subsection (2) protects information that a court has ordered to be confidential. Generally, a governmental body may withhold under section 552.107(1) only information revealing client confidences or containing legal advice or opinion. Open Records Decision Nos. 574, 559 (1990).

The information submitted to us for review is a settlement agreement between parties in litigation and is therefore not protected from disclosure as a client confidence or privileged legal advice under section 552.107(1). Moreover, there is no indication that a court has ordered the agreement be kept confidential. Accordingly, section 552.107 is inapplicable. The city must release the requested information in its entirety.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/sbm

Enclosures: Submitted documents

Ref.: ID# 26593

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