



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1995

Mr. Mark T. Sokolow
City Attorney
City of League City
300 West Walker
League City, Texas 77573-3898

OR95-138

Dear Mr. Sokolow:

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# 31949.

The requestor seeks the amount of money the City of League City (the "city") has paid out in lawsuits in the past five years either by settlement or judgment, an itemized list showing individual cases and amounts, a list of attorney's fees, and a complete list of any pending litigation by or against the city. You have submitted for our review two settlement agreements. We assume here that you have provided all remaining information responsive to the request.

You claim that the submitted settlement agreements are excepted from disclosure pursuant to section 552.103. Section 552.103(a) excepts from 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 be excepted from disclosure under section 552.103(a), information must relate to litigation that is pending or reasonably anticipated. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). As both parties have seen the agreements and the settlements are final, you may not now withhold the information pursuant to section 552.103.

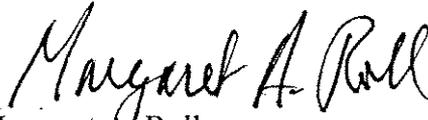
Additionally, the mere fact that an agreement contains a confidentiality clause is not sufficient to except the information from disclosure. A governmental body may not withhold information, including settlement agreements, simply because it has agreed to do so. Open Records Decision No. 444 (1986) at 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. 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 note that the settlement agreement between Eva M. Spencer and the city appears to be part of a proceeding under the United States District Court for the Southern District of Texas Galveston Division in which the court has ordered the file sealed. As the court has ordered the Spencer agreement closed,¹ you may withhold this particular agreement pursuant to section 552.107(2). *But see* Open Records Decision No. 630 (1994). However, you must release the other submitted settlement agreement as the information is not excepted under any claimed exception.

¹The order states that the court's file in this cause shall be sealed and not subject to review unless further ordered by the court.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LMM/rho

Ref.: ID# 31949

Enclosures: Submitted documents

cc: Ms. Maggie Sieger
Reporter
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(w/o enclosures)