



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1995

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
LBJ State Office Building
111 E. 17th Street
Austin, Texas 78774

OR95-903

Dear Ms. Joseph:

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# 27016.

The Office of the Comptroller of Public Accounts (the "comptroller") received a request for judgment and settlement information maintained by the comptroller. You state that the comptroller processes payments for judgments and settlements based on information submitted by the Office of the Attorney General (the "OAG"). You explain that you flagged with a "confidential indicator" on your computer system documents that the OAG marked as confidential. We understand that the comptroller does not always receive a copy of the court order relating to a file as it may not be necessary to process the voucher. You state that the comptroller is cognizant of its responsibilities to maintain information that is confidential by law, but the comptroller wants to release the information that is not excepted from required public disclosure. You contend that some of the requested information may be excepted from required public disclosure under sections 552.101, 552.103, and 552.107 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 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section incorporates confidentiality statutes into the Open Records Act. The Texas Parks and Wildlife Department indicates that section 552.101 in conjunction with Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, may make confidential a settlement agreement to which it is a party. However, this office has concluded previously that Title VII merely prevents the agents and employees of the Equal Employment Opportunity Commission from releasing information regarding a complaint; it does not prevent an employer against whom a complaint is filed, or any other individual or entity, from releasing information. Open Records Decision Nos. 245 (1980), 155 (1977). Therefore, section 552.101 in conjunction with Title VII does not make any of the settlement agreements confidential in the hands of the comptroller.

Furthermore, 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 only one file submitted for our review contains a court order making the dollar amounts paid and the terms of the settlement agreement confidential. The court in *Lena v. Texas Parks & Wildlife Department* specifically included within the terms to be enforced a confidentiality provision.¹ We read this order as prohibiting the disclosure of information under section 552.107(2).²

We have checked the remaining files against information maintained by the OAG. None of the other files contain other court orders making the requested information confidential under section 552.107(2).³ Furthermore, none of the other files contain any information that is made confidential by statute or common-law privacy. However, one file, *Neubauer v. University of Texas at Austin*, raises a question about the interpretation of section 154.073 of the Civil Practices and Remedies Code, because the settlement was reached during the mediation process. This office has not interpreted section 154.073 in the context of the Open Records Act. Therefore, we are addressing the availability of the information related to *Neubauer v. University of Texas at Austin* in an Open Records

¹We do not consider here the validity of the court order. 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.

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

³One court order does make some of the documents at issue here confidential in the possession of the district clerk. Obviously, however, none of the documents at issue here are in the possession of the district clerk. Therefore, none of the documents at issue here can be made confidential by that court order.

Decision (our file number RQ-771). Accordingly, you must release the requested information to the requestor, except for the information relating to *Lena v. Texas Parks & Wildlife Department* and to *Neubauer v. University of Texas at Austin*.⁴

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 may 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/LBC/rho

Ref.: ID# 27016

Enclosures: Submitted documents

cc: Mr. Ross Ramsey
Reporter
Austin Bureau
Houston Chronicle
1005 Congress Avenue, Suite 770
Austin, Texas 78701
(w/o enclosures)

⁴We note that section 552.103 does not except information from disclosure when both parties to the litigation have had access to the information, as is the case in these files. Open Records Decision Nos. 349 (1982), 320 (1982).