



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Mr. Sal Levatino  
114 West 7th Street  
Suite 220 Norwood Tower  
Austin, Texas 78701

OR95-1538

Dear Mr. Levatino:

You have asked 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# 35601.

The Manor Independent School District (the "district") entered into a settlement agreement with a former superintendent concerning termination of his employment contract. The settlement agreement contains a confidentiality clause against disclosing the terms of the agreement "unless required to do so by a court or administrative agency." The district has received a request for a copy of the agreement. You are concerned that the agreement may not be released pursuant to section 552.103(a) and 552.107.<sup>1</sup>

Section 552.103(a) provides that information is excepted from disclosure if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision

---

<sup>1</sup>You did not expressly raise the section 552.103(a) or 552.107(2) exceptions, but we assume from your letter that these are the exceptions to disclosure you sought to raise. We also note that the Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code ch. 552). We do not address in this ruling whether these amendments will affect requests for this type of information that are made on or after September 1, 1995.

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.

This office has held that the section 552.103(a) provision concerning "settlement negotiations" does not extend to the final terms of a settlement agreement. Open Records Decision No. 245 (1980) at 2. Therefore, section 552.103(a) is not applicable.

Section 552.107(2) provides that information is excepted from disclosure if "a court by order has prohibited disclosure of the information." In Open Records Decision No. 415 (1984) at 2, this office determined that a court order directing that settlement terms be kept confidential would except the information from disclosure under section 552.107(2):

The order of dismissal in this case, which was signed by the judge of the 103rd District Court, expressly provides that "the terms of the settlement shall not be disclosed by the parties or their attorneys." Although we have grave doubts as to whether the judge was authorized to issue an order of this nature, the fact remains that the order is extant. In light of this, we must reluctantly conclude that the requested materials are excepted from required disclosure by [section 552.107(2)]. [Emphasis added.]

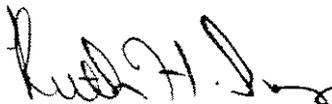
However, our review of the submitted information indicates that there is no court order requiring the agreement to be kept confidential.

Chapter 552 of the Government Code presumes that all information collected, assembled, or maintained by or for a governmental body as part of its transaction of official business is open to the public. Gov't Code §§ 552.006, .021. Section 552.022(3) specifically provides that information "relating to the receipt or expenditure of public or other funds by a governmental body" is generally public. A governmental body may not overrule these provisions merely by agreeing to keep information secret. Attorney General Opinion JM-672 (1987) at 2. Absent express statutory authority, a governmental body has no authority to make an enforceable promise or agreement to withhold information from disclosure. Attorney General Opinion H-258 (1974) at 3.

The agreement is subject to required public disclosure under chapter 552 of the Government Code and must therefore be released. 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a decorative flourish at the end.

Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 35601

cc: Ms. Barbara Wilder  
Rt. 2, Box 92D  
Manor, Texas 78653