



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 21, 1996

Ms. Roxie W. Cluck
City Attorney
P.O. Box 338
Canton, Texas 75103-0338

OR96-0744

Dear Ms. Cluck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39444.

The City of Grand Saline (the "city"), which you represent, received a request for "the final results of legal action between the City of Grand Saline and Ferd Maciel and Malcolm Lloyd, i.e. settlement amounts and conditions." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

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 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 to the

settlement agreement between Malcolm Lloyd and the city that is final. However, as to the settlement agreement that was reached by the city and Ferd Maciel during mediation and which you state is not final, we conclude that the city may withhold the preliminary settlement agreement under section 552.103(a).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. The settlement agreement between the city and Mr. Lloyd, which has been seen and signed by the opposing party in litigation, is not "privileged information." Therefore, the city may not withhold this information under section 552.107(1).

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)].

However, our review of the submitted information indicates that there is no court order requiring the settlement agreement with Malcolm Lloyd to be kept confidential. Therefore, the city may not withhold that settlement agreement under section 552.107.

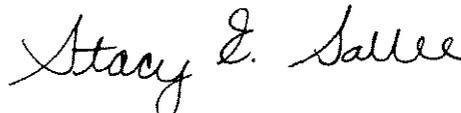
You also claim that release of the settlement agreement between the city and Malcolm Lloyd would result in an invasion of Mr. Lloyd's privacy and therefore the city is prohibited under section 552.101 of the Government Code from releasing that agreement. We have reviewed the agreement and find nothing in the agreement that, if released, would violated Mr. Lloyd's common-law or constitutional privacy. Therefore, the city may not withhold the settlement agreement with Mr. Lloyd under section 552.101 of the Government Code.

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. 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. Therefore, the city may not withhold from disclosure the final settlement agreement between the city and Malcolm Lloyd.

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 39444

Enclosures: Submitted documents

cc: Ms. Jan Adamson
Editor
The Grand Saline Sun
P.O. Drawer G
Grand Saline, Texas 75140
(w/o enclosures)