



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 9, 1998

Mr. Humberto Silva
Law Offices of Humberto Silva
134 W. Fifth Street
Weslaco, Texas 78596

OR98-0645

Dear Mr. Silva:

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# 113987.

The City of Weslaco (the "city"), which you represent, received a request for the "terms of settlement in Cause No. C-3500-95-G, styled Jeff Riviera, et al vs. City of Weslaco, et al." You contend that the terms of the settlement agreement are excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. You have submitted a copy of the Agreed Order of Dismissal with Prejudice and the confidentiality provision of the agreement for our review.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated December 16, 1997 that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

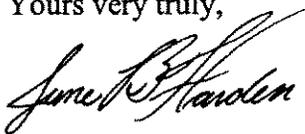
You did not provide our office with the information that was requested. Therefore, as provided by section 552.303(e), the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v.*

Houston Chronicle Publ'g Co., 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.¹ We do not believe that you have demonstrated such an interest in this case.

You state that the requested information is protected from disclosure because the settlement agreement contains a confidentiality provision. Generally, governmental bodies are prohibited from entering into contracts to keep information confidential. Open Records Decision Nos. 514 (1988), 484 (1987), 479 (1987). The Open Records Act requires the release of all information held by governmental bodies unless one of the act's specific exceptions protects the information from required disclosure. *Id.* Unless a governmental body is explicitly authorized to make an enforceable promise to keep information confidential, it may not make such a promise in a settlement agreement. Open Records Decision 114 (1975) at 1. However, if a court issues an order making the terms of a settlement agreement confidential, the agreement is confidential under section 552.107(2) of the Government Code. Since there is no evidence that the city has the requisite statutory authority or that it obtained a court order, the city may not withhold the settlement agreement based upon the confidentiality provision or section 552.107(2). Therefore, the requested information must 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 113987

¹In this instance, you have not presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to section 552.103 or 552.107(1). Therefore, we deem that you have waived these exceptions.

Enclosures: Submitted documents

cc: Mr. David Essex
Valley Morning Star
1310 South Commerce
Harlingen, Texas 78550
(w/o enclosures)