



Office of the Attorney General
State of Texas

April 7, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Scott A. Kelly
Assistant General Counsel
The Texas A & M University System
College Station, Texas 77843-1116

OR92-143

Dear Mr. Kelly:

The President of West Texas State University, an institution of the Texas A & M University System, received two written requests for access to financial information prepared in connection with the settlement of a lawsuit filed against the university. The first request is for access to "any documents and records of financial transactions relating to the settlement." The second asks for information disclosing "the amount, source and terms of payment of money that [the university] has agreed to pay in settlement of the lawsuit." You ask whether the requested information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12895.

Upon the original submission of this request, you stated that the settlement negotiations were then pending. A settlement was subsequently reached and the lawsuit was dismissed on October 31, 1991. The order dismissing the suit expressly provides that "the terms and conditions of the Release and Settlement Agreement by and between the parties hereto shall be confidential and prohibited from disclosure."

You argue that the requested information is excepted from required public disclosure by section 3(a)(7) of the Open Records Act which excepts

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, *or which by order of a court are*

prohibited from disclosure. (Emphasis added.) (Footnote omitted.)

A previous decision of this office resolves this request for information. In Open Records Decision No. 415 (1984) (copy enclosed) this office considered the effect of a court order dismissing a case which expressly provided that "the terms of the settlement [between the parties] shall not be disclosed by the parties or their attorneys." The decision concluded that the order forbade, *inter alia*, the disclosure of the following information sought by the requestor:

1. Any and all documents, memoranda and correspondence pertaining to the settlement of [this case].
2. Any and all documents specifying the dollar amount and other considerations that may have been included in the settlement of said case, and all documents specifying the amount of attorneys' fees charged and/or paid in connection with said case since July 1981.

The decision questioned the authority of the court to issue the order in question but reluctantly conceded that, by the clear terms of section 3(a)(7), the requested information was excepted by section 3(a)(7).

A similar conclusion is compelled here. Although a governmental may not agree to close public information in the absence of express statutory authority, Open Records Decision No. 414 (1984), this office is not at liberty to examine the validity of a court order prohibiting the disclosure of the terms of a settlement agreement reached between a governmental body and a private litigant. Both the terms of the court order and the information requested on this occasion are sufficiently similar to that sought in Open Records Decision No. 415 to warrant the same conclusion. Accordingly, we conclude that the requested information is excepted from public disclosure under section 3(a)(7) of the Open Records Act.¹

¹Since the issuance of Open Records Decision No. 415, the Texas Supreme Court has adopted rule 76a of the Texas Rules of Civil Procedure. Rule 76a governs a trial judge's authority to order the sealing of court records, and specifically declares that court records are open to the general public and may be sealed only in accordance with the rule. Tex. R. Civ. P. 76a, par. 1. Settlement agreements which are filed of record with the court, and certain settlement agreements which are not filed of record, are "court records" for purposes of the rule. *Id.* par. 2(a), (b). Any person may intervene as a matter of right before or after a judgment to seal court records. *Id.* par. 7.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-143.

Yours very truly,



Steve Aragón
Assistant Attorney General
Opinion Committee

SA/lmm

Ref.: ID#s 12895, 12910; 13144

Enclosure: Open Records Decision No. 415 (1984)

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