



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1993

Ms. Martha C. Wright
Wright and Associates, P.C.
630 Dalworth Street
Grand Prairie, Texas 75053-1777

OR93-572

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of title 5 of the Government Code.¹ Your request was assigned ID# 21401.

Grand Prairie Independent School District ("the school district") received two requests. One is for "all information concerning the John Pogue grievance, subsequent hearings and eventual decision." The other is for "a copy of the settlement of Cause No. 92-12056, the lawsuit filed by John Pogue against Superintendent Marvin Crawford and the board of trustees." You assert that you may withhold a copy of the requested settlement agreement based on sections 3(a)(2), 3(a)(3), and 3(a)(9) of V.T.C.S. article 6252-17a. These exceptions to required public disclosure are now codified as sections 552.102(a), 552.103(1), and 552.109 of the Government Code. You raise no exception to the release of any other information that may be responsive to the first request. We assume, therefore, that any other information which the school district possesses concerning the John Pogue grievance hearing or decision will be released.

Section 552.102(a), formerly section 3(a)(2) of V.T.C.S. article 6252-17a, excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This exception applies when the release of information would result in a violation of the common-law right to privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The common-law right to privacy is violated if (1) the information contains highly intimate or embarrassing facts about a person's private affairs

¹The codification in the Government Code of the Open Records Act, formerly found in V.T.C.S. article 6252-17a, was effective September 1, 1993. See Acts 1993, 73d Leg., ch. 268, § 49, at 989. No substantive change was intended by the codification. See *id.* § 47, at 988.

such that its release would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Of course, under section 552.102(a) the information must be a part of the person's personnel file. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

You are concerned about the privacy rights of two parties to the litigation to which the settlement agreement at issue pertains, the plaintiff and one of the defendants. It is not apparent that the agreement is part of the personnel file of either party. However, even assuming it is part of their personnel files, the agreement contains no highly intimate or embarrassing facts about their private lives. *Cf.* Open Records Decision No. 245 (1980) (settlement terms on an equal employment claim). Moreover, the public has a legitimate interest in the agreement. *See* Open Records Decision No. 114 (1975). Thus, you may not withhold the settlement agreement under section 552.102(a).

Section 552.103(1), formerly section 3(a)(3) of V.T.C.S. article 6252-17a, permits a governmental body to withhold information that relates to litigation of a criminal or civil nature and settlement negotiations, to which the governmental body is a party. The applicability of the exception ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Additionally, if the opposing parties in the litigation have seen or had access to any of the information, there is no justification for withholding the information pursuant to section 552.103(1). Open Records Decision Nos. 349, 320 (1982).

Though section 552.103(1) excepts information relating to "settlement negotiations," it does not extend so far as to except the final terms of the settlement. Open Records Decision No. 114 (1975). The opposing party in the litigation has obviously had access to the settlement agreement since he signed it. Further, since the litigation has been settled, the litigation has concluded. Accordingly, because the parties have concluded the litigation by executing a settlement agreement, you may not withhold the agreement based on section 552.103. *See* Open Records Decision Nos. 245 (1980); 114 (1975). *But see* Open Records Decision No. 415 (1984) (section 3(a)(7) of V.T.C.S. article 6252-17, now section 552.107 of the Government Code, excepts terms of settlement agreement when court order states that terms shall not be disclosed).

We reach this conclusion even though paragraph number 11 of the settlement agreement provides that the parties agree not to disclose the terms of the agreement. A governmental body has no authority to withhold information based on the fact that under the terms of a settlement agreement, it agreed to keep that information confidential. Open Records Decision No. 114 (1975). *But see* Open Records Decision No. 444 (1986) (governmental body may enter confidentiality agreement where specifically authorized to do so by statute).

Section 552.109 of the Government Code, formerly section 3(a)(9) of V.T.C.S. article 6252-17a, exempts from required public disclosure

private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy. . .

You contend that this exception applies to the settlement agreement because some of the defendants in the law suit are school board members who were named as defendants not only in their professional, but in their personal capacities. Section 552.109 applies to the "private correspondence and communications" of the school board members. We do not consider a settlement agreement to be the "private correspondence or communication" of the board members. *Cf.* Open Records Decision Nos. 199 (1978) (investigative report of the Texas Board of Private Investigators and Private Securities Agencies); 40 (1974) (list of long distance calls made by members of Legislature).

Moreover, the test for the application of section 552.109 is the test for a violation of the common-law right to privacy under *Industrial Foundation*. Open Records Decision No. 506 (1988) at 3. Applying that test, we conclude that the school board members' common-law right to privacy would not be violated by the disclosure of the settlement agreement. We do not consider that fact that a school board member is sued by a school employee in his personal capacity a highly intimate or embarrassing fact about that person's private affairs. Accordingly, you may not withhold the settlement agreement based on section 552.109 of the Open Records Act. Having determined that none of the exceptions you raised apply, we conclude that the school district must release the settlement agreement.

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 contact this office.

Yours very truly,



Kay Guajardo
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Open Government Section

KHG/rho

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