



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 18, 1994

Mr. Steven W. Arrange  
Deputy City Attorney  
Real Estate Section  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR94-452

Dear Mr. Arrange:

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# 27392.

The City of San Antonio (the "city") has received a request under the Open Records Act for a Release and Settlement Agreement executed by the city and a former employee. This settlement agreement was executed upon the employee's desire to resign her position and did not arise out of legal proceedings. You claim that the agreement is excepted from disclosure by sections 552.102 and 552.107.

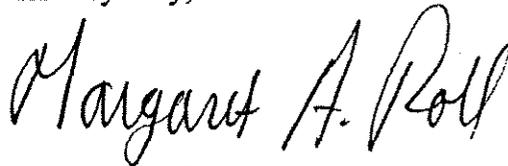
We conclude that section 552.102 does not except the agreement from required public disclosure. Section 552.102 excepts from disclosure information in a personnel file, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." This section applies only if the information in a personnel file meets the test for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 444 (1986), this office determined that the public has a genuine interest in the circumstances of a public employee's resignation or termination

and reiterated the principle that a governmental body may not simply agree to keep information confidential. *Id.* at 6. Therefore, you may not withhold the agreement requested in this case under section 552.102.

We also conclude that section 552.107 does not except the agreement from required public disclosure. Section 552.107 excepts from disclosure information protected by the attorney-client privilege and information that a court has prohibited the disclosure of by court order. *Open Records Decision Nos. 574 (1990) at 5; 415 (1984) at 2.* However, the agreement in this case was executed by both parties to the dispute, and thus, is not protected by the attorney-client privilege. *See Tex. R. Civ. Evid. 503(a)(5); Lewis v. State, 709 S.W.2d 734, 736 (Tex. App.--San Antonio 1986, pet. ref'd, untimely filed).* Furthermore, as noted above, the agreement did not arise out of any legal proceedings, and thus, no court order prohibits the disclosure of the agreement. For these reasons, you may not withhold the requested agreement under section 552.107. You must release the agreement in its entirety.

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,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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Ref: ID# 27392

Enclosures: Submitted documents

cc: Mr. Steve Hasson  
Chairman  
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(w/o enclosures)