



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Ms. Elizabeth G. Neally
Roerig, Oliveira & Fisher, L.L.P.
855 West Price Road, Suite 9
Brownsville, Texas 78520-8786

OR94-524

Dear Ms. Neally:

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# 27413.

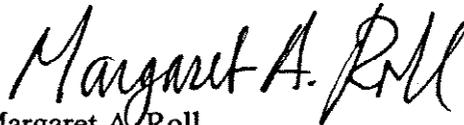
The Progreso Independent School District received a request for the out-of-court settlement agreement reached in *Antonio Sandoval v. Progreso Independent School District*, No. M-93-134 (S.D. Tex.). You requested an opinion from this office by letter dated July 1, 1994, and claimed that sections 552.103 and 552.107 except the settlement agreement from disclosure. We acknowledged your request by a postcard sent from this office on July 15, 1994, which indicated that we need a copy of the request for information that you received. That postcard also indicated that discretionary exceptions to disclosure would be waived if we did not receive the information within seven days. We still have not received a copy of this request for information.

You may not withhold the settlement agreement under section 552.103. You have waived the discretionary exception embodied by section 552.103 by your failure to supply a copy of the request for this document. Furthermore, section 552.103 applies only when litigation is pending or reasonably anticipated and not when the opposing party in the litigation has previously had access to the requested information. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 5. The settlement agreement itself indicates that litigation is no longer pending and that Mr. Sandoval, the opposing party, has had access to the requested information. Therefore, even if you had submitted to this office a copy of the request for the settlement agreement, section 552.103 would not have excepted it from disclosure.

We also conclude that you may not withhold the settlement agreement under section 552.107. Section 552.107(2)¹ excepts from disclosure information if "a court by order has prohibited disclosure of the information." This section permits a governmental body to withhold the amount and terms of a settlement if the court enters an order prohibiting the parties to the agreement or their attorneys from disclosing this information. Open Records Decision No. 415 (1984) at 2. Although the agreement in this case includes a confidentiality provision, there is no indication in the document or in your accompanying letter that a court has prohibited the disclosure of the agreement. Thus, the terms of this settlement agreement are not excepted from disclosure by section 552.107(2), Open Records Decision Nos. 415 at 2; 114 (1975), and you must release the settlement 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

MAR/PIR/rho

Enclosure: Submitted document

Ref: ID# 27413

cc: Ms. Ofelia Garcia
P.O. Box 640
Progreso, Texas 78579
(w/o enclosure)

¹Section 552.107(1) concerns information protected by the attorney-client privilege, Open Records Decision No. 574 (1990) at 5, and is not involved in this ruling.