



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Mr. Ruben R. Peña
Attorney at Law
P.O. Box 530160
Harlingen, Texas 78550

OR94-667

Dear Mr. Peña:

On behalf of the San Benito Consolidated Independent School District, 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# 29277.

The San Benito Consolidated Independent School District (the "district") received a request for "all documents related to the finalized negotiated resignation agreement" between the district and its former superintendent. You claim that the agreement is protected from public disclosure by section 552.103 of the Government Code. That provision, also known as the "litigation exception," only applies in situations where litigation is pending or reasonably anticipated. Open Records Decision No. 551 (1990) at 4 (copy enclosed). You indicate that this agreement was reached in order to avoid litigation and give no indication that litigation is reasonably anticipated. Therefore, section 552.103 does not except the agreement from public disclosure.

Furthermore, the provision in the agreement (clause 17) that attempts to make its terms confidential does not accomplish that purpose. The Open Records Act requires the release of all information collected, assembled, and maintained by a governmental body unless one of the act's specific exceptions protects the information from disclosure. Gov't Code § 552.021; Open Records Decision No. 514 (1988) at 1-2. None of the act's exceptions protects a settlement agreement or any other contract merely because it contains a section in which the parties agree to keep any part of the agreement confidential. Therefore, you must release the requested 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

Ref.: ID# 29277

Enclosures: Open Records Decision No. 551
Submitted documents

cc: Mr. Tony Solis
San Benito News
P.O. Box 1791
San Benito, Texas 78586
(w/o enclosures)