



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1997

Mr. Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR97-2003

Dear Mr. Smith:

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# 108843.

The City of Coppell (the "city") received a request for certain documents relating to a settlement agreement between the city and a former employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

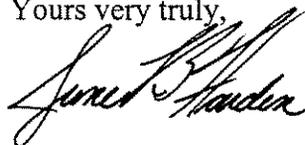
Initially, we consider your argument that the requested information is protected from disclosure because the settlement agreement contains a confidentiality agreement. Generally, governmental bodies are prohibited from entering into contracts to keep information confidential. Open Records Decision Nos. 514 (1988), 484 (1987), 479 (1987). The Open Records Act requires the release of all information held by governmental bodies unless one of the act's specific exceptions protects the information from required disclosure. *Id.* Unless a governmental body is explicitly authorized to make an enforceable promise to keep information confidential, it may not make such a promise in a settlement agreement. Open Records Decision 114 (1975) at 1. However, if a court issues an order making the terms of a settlement agreement confidential, the agreement is confidential under section 552.107(2) of the Government Code. Since there is no evidence that the city has the requisite statutory authority or that it obtained a court order, the city may not withhold the settlement agreement based upon the confidentiality agreement.

You also claim that the settlement and check are excepted from disclosure under section 552.102. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). The information at issue here clearly involves a financial transaction between an individual and the governmental body. *See* Open Records Decision No. 480 (1987). We do not believe that the information is protected by a right of privacy. The city, therefore, may not withhold the settlement or the check under section 552.102.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ghg

Ref.: ID# 108843

Enclosures: Submitted documents

cc: Mr. Arthur H. Kwast
P.O. Box 1397
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(w/o enclosures)

