



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2003

Mr. Bruce A. Koehler
Mounce, Green, Myers, Safi & Galatzan
100 North Stanton, Suite 1700
El Paso, Texas 79901-1448

OR2003-6851

Dear Mr. Koehler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188407.

The Ysleta Independent School District (the "district"), which you represent, received a request for the "resolution between the [district] and 10 former or current district employees seeking back wages in 2002." You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.107(2) of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 makes certain information public, unless it is expressly confidential under other law. *See* Gov't Code § 552.022(a). One category of public information under section 552.022 is "a settlement agreement to which a governmental body is a party[.]" *Id.* § 552.022(a)(18). The submitted information constitutes a settlement agreement to which the district is a party that must be released, unless it is confidential under other law. Since the district claims that this information is excepted from disclosure pursuant to sections 552.101 and 552.107(2) of the Government Code, we will address these claims.

Section 552.107(2) excepts information from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You have submitted for our review a copy of an "Order on Dismissal" (the "order") signed on December 13, 2002 by the presiding judge in this matter. We note that the order reveals that the court granted its consent to the settlement agreement and dismissed the associated cause with prejudice. The order also reveals that the court "reserv[ed] authority to enforce the settlement of this matter." However, after carefully considering your arguments and reviewing the submitted settlement agreement, we find that the order is ineffective in supporting the district's claim

that the agreement should be withheld under section 552.107(2) based on the fact that the agreement is specifically made public pursuant to section 552.022(a)(18) of the Government Code. Accordingly, we conclude that the district may not withhold any portion of the submitted settlement agreement under section 552.107(2) of the Government Code.

You also claim that the submitted settlement agreement is excepted from disclosure pursuant to section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). We note that for information to be encompassed by section 552.101, the provision argued by a governmental body must explicitly require confidentiality for the information. A confidentiality requirement will not be inferred from statutory or constitutional structure. *See, e.g.*, Open Records Decision No. 465 at 4-5 (1987). After reviewing the district's arguments and the submitted settlement agreement, we find that the district has failed to adequately demonstrate that any portion of the agreement is expressly made confidential by law. Accordingly, we conclude that the district may not withhold any portion of the submitted settlement agreement under section 552.101 of the Government Code. Consequently, the district must release the entirety of the submitted settlement agreement to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 188407

Enc. Submitted documents

c: Mr. Lenny E. Jurado
El Paso Times
300 N. Campbell
El Paso, Texas 79901
(w/o enclosures)