

IN THE SUPREME COURT OF TEXAS

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No. 98-0617
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CITY OF GARLAND, TEXAS AND RON HOLIFIELD, PETITIONERS

v.

THE DALLAS MORNING NEWS, RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS
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Argued on March 3, 1999

JUSTICE ENOCH, joined by CHIEF JUSTICE PHILLIPS and JUSTICE ABBOTT, concurring.

While I join in the Court's judgment, I have reservations about the plurality's analysis of whether this memorandum is a public document and whether the examples provided by the legislature apply.

First, I would give more weight to the examples given by the legislature than the plurality does in determining the scope of the Act. The plurality concludes that since the examples given in section 552.022 do not limit the meaning of other sections in the chapter, a draft document is public information. But in no other area of statutory interpretation would we conclude that the legislature has written a completely irrelevant list of examples into the statute. One of the examples of public information is "a completed report, audit, evaluation, or investigation."¹ In my opinion, this example draws a distinction between documents collected, maintained, or assembled by a governmental body

¹TEX. GOV'T CODE § 552.022.

and documents that a governmental body owns or has a right of access to. I would emphasize that to be public information, the memorandum generated by the city manager has to be completed. And in this case what makes it completed is that the city manager presented it to the city council for decision and it was used by the council in making a decision on the problem with the finance director. Consequently, the memorandum is public information.

Because I agree that the memorandum is public information, I must consider whether the exceptions apply. I join in the result of the plurality's analysis of whether the exceptions apply, but not in all of its writing.

I cannot join the dissent because it treats federal cases as controlling the Texas Open Records Act, even though the Act does not purport to conform to federal law and even though the federal cases did not exist at the time the Act was passed.

When state statutes are modeled on federal legislation, federal authority can be relevant to varying degrees. In some cases, federal law controls the interpretation of the state statute. These are cases in which either the state statute says that federal authority will control, or the federal authority says that it will control. Antitrust and Title VII cases are examples.²

When a state statute is modeled on federal legislation but makes no statement about the relevance of federal authority, courts may look to analogous federal authority, but there is no

² See *NME Hospitals, Inc. v. Rennels*, 994 S.W.2d 142, 144 (Tex. 1999); *Abbott Lab., Inc. v. Segura*, 907 S.W.2d 503, 505 (Tex. 1995); *Id.* at 511 (Gonzalez, J., concurring); *Caller-Times Pub. Co. v. Triad Communications*, 826 S.W.2d 576, 580-81 (Tex. 1992); *Schroeder v. Texas Iron Works, Inc.*, 813 S.W.2d 483, 485 (Tex.1991); *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 687 (Tex. 1990).

mandate that they do so.³ This case is an example. We have previously observed that “the legislature enacted TORA to conform loosely to the federal Freedom of Information Act.”⁴ Unlike the first category of cases, the Act has no statement that federal authority is determinative in the issues before us. I cannot agree that federal cases decided subsequent to the statute’s passage dictate how Texas courts are to resolve the Texas statute’s continuing application. As I believe the federal cases read more broadly the law than I can read this statute, I am unpersuaded by their reasoning.

For these reasons, I concur in the judgment.

Craig T. Enoch
Justice

Opinion delivered: January 13, 2000

³ See *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Thomas v. Oldham*, 895 S.W.2d 352, 356-57 (Tex. 1995); *State v. Ross*, 953 S.W.2d 748, 753-54 (Tex. Crim. App. 1997); *Dimas v. State*, 987 S.W.2d 152 (Tex. App. — Fort Worth 1999, pet. ref’d); *Summers v. Welltech*, 935 S.W.2d 228, 232-33 (Tex. App. — Houston [1st Dist.] 1996, no writ).

⁴ See *A & T Consultants*, 904 S.W.2d at 676.