



July 15, 1999

Mr. E. Lawrence Oaks  
Executive Director  
Texas Historical Commission  
P.O. Box 12276  
Austin, Texas 78711-2276

OR99-1988

Dear Mr. Oaks:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125768.

The Texas Historical Commission (the "commission") received an open records request for a variety of information concerning the site of the "Golf Course at Universal City." In response to the request, you submit to this office for review the information which you assert is responsive. You state that the commission will make available to the requestor some responsive information. You contend, however, that the submitted records are excepted from required public disclosure by section 191.004 of the Texas Natural Resource Code and section 442.007 of the Texas Government Code.<sup>1</sup> We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> This section encompasses

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<sup>1</sup>Specifically, we note that you cite to section 442.007(f) of the Government Code, however, a review of the applicable statute shows that there is no sub-section (f) in the specified provision. Therefore, we assume that you claim section 442.007, rather than a specific sub-section.

<sup>2</sup>Based on the related correspondence and your letter to this office, it appears that there is a question as to the timeliness of the commission's request for a ruling. This situation raises a question of fact, and this office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). However, we note that when a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration, such as under section 552.101, that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests). Because the presumption of openness is overcome by a showing that information is confidential by law, we must consider the applicability of the confidentiality provision at issue.

information protected by other statutes. Section 191.004 of the Texas Natural Resource Code provides

(a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.

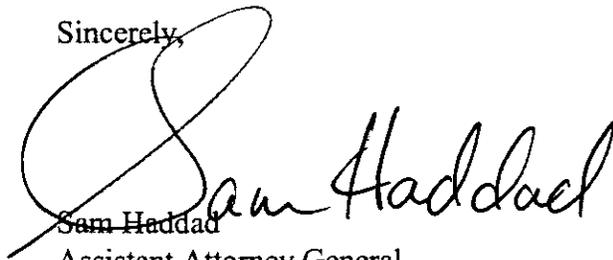
(b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.

(c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

(Footnote omitted). You represent that “[t]he archaeological deposits that [the requestor] is concerned with are on lands owned by the City of Universal City and one of these sites has already been looted and destroyed by relic collectors. It is imperative therefore, that the other sites on this property be protected and there [sic] locations restricted.” Section 442.007(a) of the Government Code provides that “[t]he commission, through the state archeologist, shall direct the state archeological program.” Therefore, based on the preceding statutes, we conclude that the commission has demonstrated that the submitted information is confidential, not subject to the act, and excepted from disclosure.

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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 125768

Encl.: Submitted information

cc: Mr. Daniel Castro Romero, Jr.  
8251 149<sup>th</sup> Way, Apartment 139  
Redmond, Washington 98052-3452  
(w/o enclosures)