



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2007

Ms. Mary K. Sahs
Sahs & Associates, P.C.
For Bandera County River Authority and Groundwater District
1700 Collier Street
Austin, Texas 78704

OR2007-00352

Dear Ms. Sahs:

You ask 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# 269447.

The Bandera County River Authority and Groundwater District (the "district"), which you represent, received a request for a specified settlement agreement between the district and a private citizen. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the private citizen who is a party to the agreement. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert that the settlement agreement is subject to a confidentiality clause. Information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("the obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract"), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the requested information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

You assert that the submitted information is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You argue that the settlement agreement is confidential under section 154.073 of the of the Civil Practice and Remedies Code, which makes certain communications and records related to an alternative dispute resolution procedure confidential. *See* Civ. Prac. & Rem. Code § 154.073(a), (b). However, you explain that the private citizen at issue filed a lawsuit against the district in federal court, and that the submitted settlement agreement resulted from court-ordered mediation between the citizen and the district. You also inform us that “strictly speaking, [sic] the mediation was ordered under federal law and not Chapter 154.” We find you have thus not established that the settlement agreement at issue is subject to the requirements of chapter 154 of the Civil Practice and Remedies Code. Further, even if chapter 154 was applicable to the settlement agreement, a finding we do not reach, we note that section 154.073(d) provides the following: “[a] final written agreement to which a governmental body . . . is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with [the Act].” Thus, the submitted settlement agreement is not confidential under section 154.073 of the of the Civil Practice and Remedies Code, and may not be withheld under section 552.101 the Government Code on that ground.

You also assert that “to the extent that federal statutes and regulations protect settlement agreements from disclosure under the federal Freedom of Information Act [“FOIA”], such protections should be applied here as well.” However, in Attorney General Opinion MW-95 (1979), this office determined that FOIA does not apply to records held by a Texas agency or its political subdivision. Furthermore, this office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential under one of FOIA’s exceptions. *See* Open Records Decision Nos. 496 at 4 (1988), 124 at 1 (1976). Accordingly, the district may not withhold the submitted information pursuant to section 552.101 in conjunction with FOIA.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987)

(prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review of the submitted settlement agreement, we do not believe it contains the type of information made confidential by common-law privacy; therefore, district may not withhold the submitted information under section 552.101 on that ground. Instead, the district must release the 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).

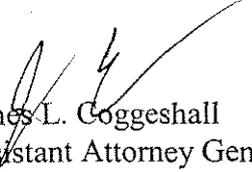
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jww

Ref: ID# 269447

Enc. Submitted documents

c: Ms. Christina Ryrholm
Publisher
Bandera Bulletin
P.O. Box 697
Bandera, Texas 78003
(w/o enclosures)

Mr. Roger Sullivan
P.O. Box 64064
Pipe Creek, Texas 78063
(w/o enclosures)