



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2010

Ms. Christine Badillo  
Walsh, Anderson, Brown, Gallegos and Green, P.C.  
For Goliad Independent School District  
P.O. Box 2156  
Austin, Texas 78768

OR2010-15143

Dear Ms. Badillo:

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# 395639.

The Goliad Independent School District (the "district"), which you represent, received a request for information related to the district's acquisition of land from a named individual. Although you take no position as to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of a third party. Thus, you notified Fray, Hall & Associates, Inc. ("FHA") of the request and of its right to submit arguments to this office as to why its information should not be released. *See Gov't Code* § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *Open Records Decision No. 542 (1990)* (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). The district has submitted comments it received from FHA. We have also received comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

FHA states the submitted information includes a notation that its use by anyone other than the stated intended user and for any other use than the stated intended use is prohibited. FHA asserts that, because the requestor is not the stated intended user and his use is not the stated intended use, the submitted information should be withheld. Information is not confidential under the Act, however, simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540

S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [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 of the Government Code). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

We note a portion of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As no exceptions to disclosure are raised, the submitted information must be released to the requestor, but any information protected by copyright may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 395639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Lee Fray  
Fray, Hall & Associates, Inc.  
4403 Lilac Lane  
Victoria, Texas 77901  
(w/o enclosures)