



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2012

Mr. Allan S. Graves
For Tarrant County Hospital District
Adams, Lynch & Loftin, P.C.
3950 Highway 360
Grapevine, Texas 76051-6741

OR2012-11930

Dear Mr. Graves:

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# 460637 (PIR No. 12160).

The Tarrant County Hospital District (the "district") received a request for all invoices for office supplies for the John Peter Smith Hospital for a specified period of time. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Guy Brown Management, L.L.C. ("Guy Brown"). Accordingly, you state, and provide documentation showing, you notified Guy Brown of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Guy Brown. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

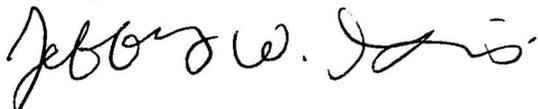
We understand Guy Brown to assert the submitted information is confidential because it is subject to a confidentiality agreement. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. See *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). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Guy Brown raises section 552.104 of the Government Code. Section 552.104, however, is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. See Open Records Decision Nos. 592 (1991), 522 (1989) (discretionary exceptions in general). In this instance, the district does not raise section 552.104 as an exception to disclosure. Therefore, the district may not withhold any of the information at issue pursuant to section 552.104. See ORD 592 (governmental body may waive section 552.104). As you raise no exception to disclosure, the submitted information must be released.

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, 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 460637

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Philip Markuson
COO
Guy Brown Management, L.L.C.
9003 Overlook Boulevard
Brentwood, Tennessee 37027
(w/o enclosures)