



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Mr. Wesley A. Ogilvie
Assistant General Counsel
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711-2788

OR2016-10739

Dear Mr. Ogilvie:

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# 610076.

The Texas Higher Education Coordinating Board (the "board") received a request for specified documents provided to the board by a named entity. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of The Accreditation Commission for Acupuncture and Oriental Medicine ("ACAOM"). Accordingly, you state, and provide documentation showing, you notified ACAOM 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 ACAOM. 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 information and the submitted arguments.

ACAOM contends its information is confidential because ACAOM's own rules, policies, and procedures regard such information as confidential and not public, and the information was intended to be seen by only the board. We note information is not confidential under the Act simply because the party submitting 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, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987);

Open Records Decision Nos. 541 at 3 (1990) (“[T]he 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 Gov’t Code § 552.110). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any policy or expectation to the contrary.

We note portions of the submitted information are subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the board must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. As we have received no further arguments against disclosure, the remaining 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 610076

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)