ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2004

Mr. Mark P. Tilley
Powell & Leon, L.L.P.
1706 West Sixth Street
Austin, Texas 78703-4703

OR2004-1064

Dear Mr. Tilley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197167.

The Copperas Cove Independent School District (the "district"), which you represent, received a request for letters of recommendation submitted on the requestor's behalf. The district asks whether it must "provide the information requested even thought [sic] the requestor has waived his right to examine them?" Furthermore, the district asks whether "an individual may waive by agreement the protections of the [Public Information] Act."

A governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Public Information Act (the "Act"). Attorney General Opinion JM-672 (1987); Open Records Decision No. 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."). In Open Records Decision No. 283 (1981), the requestor sought access to her own reference letters. The governmental entity argued that the requestor waived her right to inspect the information by signing an agreement acknowledging that the information is confidential and the agency cannot reveal the reason for rejection of the applicant. This office concluded that the requestor had not waived access to the information, and governmental bodies are prohibited from entering into agreements to keep information confidential. ORD 283 at 2. Consequently, because the district has not asserted an exception to disclosure and failed to submit the requested information and the request for information, it must release the information, notwithstanding any agreement specifying otherwise. *See* Gov't Code §§ 552.301, .302.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Texas Building and Procurement Commission 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,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 197167

c: Requestor
c/o Mr. Mark P. Tilley
Powell & Leon, L.L.P.
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