



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 23, 2004

Mr. Don Spaulding
Maverick County Hospital District
744 South Bibb Street
Eagle Pass, Texas 78852

OR2004-9987

Dear Mr. Spaulding:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213487.

The Maverick County Hospital District (the "district") received a request for "copies of all the contracts and agreements between [UHS]/Fort Duncan Medical Center and [the district]." We have considered your comments and reviewed the submitted information.

You do not contend that the submitted Asset Purchase Agreement (the "agreement") is excepted from disclosure pursuant to one of the exceptions under the Public Information Act (the "Act"). See Gov't Code § 552.301(a), (b) (governmental body that wants to withhold information pursuant to exception under subchapter C of Act must ask for attorney general decision, stating exception that applies, no later than 10 days after receiving written request). Rather, you indicate that the agreement requires the district and the buyer "to cooperate and mutually agree" upon public disclosures of information pertaining to the agreement.

We emphasize that information is not confidential under the Act simply because a party anticipates or requests that the information be kept confidential. *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. 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."). Consequently, unless information at issue falls within an exception to disclosure, it must be released,

notwithstanding any agreement specifying otherwise. In this case, because you do not contend that the information at issue is subject to one of the Act's exceptions, we determine the submitted documents are not excepted from required public disclosure. We therefore conclude the district must release the submitted information to the requestor. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Saldivar", with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 213487

Enc: Submitted documents

c: Ms. Enriqueta Diaz
2424 Cenizo Trail
Eagle Pass, Texas 78852
(w/o enclosures)