



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 17, 2009

Ms. Vanessa A. Gonzalez  
Allison, Bass & Associates  
Attorney for Burleson County  
402 West 12<sup>th</sup> Street  
Austin, Texas 78701

OR2009-05123

Dear Ms. Gonzalez:

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# 338964.

Burleson County (the "county"), which you represent, received a request for the dollar amount reached in a specific settlement agreement. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that some of the submitted information is not responsive to the request for information, which seeks only the "dollar amount of the settlement." We have marked the information that is responsive to the present request. Accordingly, any information that does not pertain solely to the "dollar amount of the settlement" is not responsive to the current request. The county need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, you assert that the submitted dollar amount of the settlement is confidential because the settlement agreement contains a confidentiality provision. 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 No. 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.”). Consequently, unless the responsive information is encompassed by an exception to disclosure, it must be released to the requestor.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You raise section 552.101 of the Government Code in conjunction with rule CV-88 of the Local Rules for the United States District Court for the Western District of Texas. We note that the Federal Rules of Civil Procedure were adopted pursuant to the Rules Enabling Act, section 2072 of title 28 of the United States Code, which authorizes the United States Supreme Court to promulgate rules of practice and procedure for the federal courts. *See* 28 U.S.C. § 2072(a). Pursuant to rule 83 of the Federal Rules of Civil Procedure, a district court may adopt and amend local rules governing its practice. *See* Fed. R. Civ. P. 83. A district court rule adopted pursuant to rule 83 has “the force of law.” *Weil v. Neary*, 278 U.S. 160, 169 (1929); *see also U.S. v. Hvass*, 355 U.S. 570, 575 (1958) (local rules are regarded as “law[s] of the United States” for purposes of perjury statute).

You indicate that the responsive information is a record made at an alternative dispute resolution procedure conducted pursuant to Rule CV-88. Rule CV-88 states:

(i) Confidentiality: Except as otherwise provided herein, or as agreed by the participants, a communication relating to the subject matter of any civil or criminal dispute made by any participant during an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, may not be disclosed, may not be used as evidence against the participant in any judicial or administrative proceeding, and does not constitute a waiver of any existing privileges or immunities.

(1) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute.

(2) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

*See* W. D. Tex. Loc. R. CV-88(i). Based on your representations and our review of the information at issue, we conclude that the responsive information is confidential under rule

CV-88 and must be withheld from disclosure on that basis under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/rl

Ref: ID# 338964

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)