

# **TITLE 13. CULTURAL RESOURCES**

## **Part II. Texas Historical Commission**

### **Chapter 24. Restricted Cultural Resource Information**

#### 24.1 Object.

The Texas Historical Commission, hereafter referred to as the commission, is specifically empowered to adopt reasonable rules and regulations concerning access to Restricted Cultural Resource Information (RCRI) contained within the Texas Historic Sites Atlas (THSA) database, and the libraries, documents, maps, and files of the commission. Implementation of registration procedures for public access to and use of this restricted information is the objective of this chapter.

#### 24.2 (RESERVED)

#### 24.3 Scope.

The intent of these rules is to restrict access to specific cultural resource data to those individuals that have a legitimate scientific or legal interest in obtaining and using that information. The intent is not to limit the public's use of all information that the commission has within its libraries, files, documents, and the THSA database; however, as provided for in Section 442.007(f) of the Texas Government Code, and Section 191.004(a-c) of the Texas Natural Resources Code, the commission can determine what cultural resource information is sensitive and what information needs to be restricted due to potential dangers to those resources. The cultural resources that the commission considers to be at risk include archeological sites, shipwrecks, certain historic structures and engineering features. Public disclosure of any information relating to the location or character of these resources would increase their risk of harm, theft or destruction. Therefore, this information is defined as restricted and is not subject to public disclosure under state law. Restrictions on who can obtain data and how the data are used is within the legal authority of the commission, and can be defined through the rule-making authority of the commission.

#### 24.4 (RESERVED)

#### 24.5 Compliance with Rules and Regulations.

If a registered user of RCRI fails to comply with any of the rules and regulations of the commission, or any of the terms of an RCRI Access Agreement, or fails to properly conduct database searches, or fails to act in the best interest of the state, the commission may immediately revoke the user's access and notify the user of such cancellation by Internet e-mail or by registered letter, mailed to the last address furnished to the commission by the user. Upon cancellation of access, the user forfeits all rights to the restricted data. Access that has been canceled could be reinstated through the process of re-application as provided for in the application process defined in Section 24.19 of this title (relating to Restricted Information Application Submission and Review Procedures).

## 24.6 (RESERVED)

## 24.7 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

1. *Access account* - Confidential transaction record verifying an individual's identity and authority to access the restricted information within the THSA database.
2. *Access agreement* - A contract signed or otherwise accepted by all users of RCRI, which states that they agree to comply with the regulations governing the use of RCRI, including the restricted data contained within the THSA database.
3. *Access committee* - The RCRI Access Committee. A standing committee composed of the Director of the Archeology Division, the Director of the History Programs Division, the State Archeologist, and the Director of the Texas Archeological Research Laboratory of the University of Texas at Austin, or their designees, which has the authority to determine an applicant's qualification for access to restricted information, and the ability to grant or deny such access.
4. *Applicant* - An individual who submits an application request for access to RCRI data sources, including the THSA database.
5. *Application form* - The completed information packet filed by an applicant being considered for access privileges to RCRI.
6. *Cultural resource information* - Data pertaining to cultural resources, including but not limited to site records, reports, location information, notes, photographs, and maps.
7. *Atlas* - The Texas Historic Sites Atlas (THSA).
8. *Cultural resource* - A site or place where there is physical evidence of past human activities, such as structures, artifacts or alterations of the natural environment, and which is fifty or more years old.
9. *Curriculum vitae* - Brief account of the applicant's career and qualifications.
10. *Database* - Information and data contained within a computer, file, or document.
11. *Legitimate scientific or legal interest* - An interest based on specific research goals associated with professional archeological, historical, or architectural research as defined in Chapter 191 of the Texas Natural Resources Code, or legal jurisdiction directly related to ownership of sites classified as restricted under this title.

12. *Political subdivision* - A political subdivision of the State, as defined in Chapter 191 of the Texas Natural Resources Code.
13. *Site* - A cultural resource location containing evidence of either a prehistoric and/or historic occupation, or activity, building, or structure, whether standing, in ruin, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.
14. *Site location* - Information concerning the location, placement, or locality of a cultural resource.
15. *Site records* - All data and information relating to the character, condition, and location of any archeological site or other cultural resource, and all data and information pertinent to collections of material remains. Site records include, but are not limited to, photographs, maps, notes, drawings, site data forms, documents, sound tapes, and computerized data.
16. *State agency* - A department, commission, board, office, or other agency, as defined in Chapter 191 of the Texas Natural Resources Code.
17. *Steward* - A member of the Texas Archeological Stewardship Network.
18. *Texas Historic Sites Atlas* - The computer database documenting historical and archeological sites and properties in the state of Texas, as well as the computer database server on which this information resides and the system that provides access to this database through the Internet.
19. *User* - An individual who accesses and uses information contained within the THSA database or within the libraries, files, documents, and maps held by the commission.

24.8 (RESERVED)

24.9 The Texas Historic Sites Atlas.

The THSA is an evolving database of cultural resource information administered by the commission. This database is accessible to the public through the World Wide Web. The THSA contains information on archeological sites, historic structures, engineering features, and industrial sites, as well as digital maps of these site locations.

24.10 (RESERVED)

24.11 Public Information.

As specified under the Texas Open Records Act, all information collected and maintained by the commission that is not specifically exempted from release by either a specific exception to the act (Texas Government Code VTCA §552.101), or by previous statute, constitutional amendment, or rule, is considered public. The vast majority of the data held by the commission is open to the

public and is accessible through the commission's libraries, files, and the THSA web site without open records requests.

#### 24.12 (RESERVED)

#### 24.13 Restricted Information.

The following categories of information are hereby defined as Restricted Cultural Resource Information (RCRI).

- a) All archeological site location and site record information that contains longitude and latitude, Universal Transverse Mercator coordinates, or other high resolution geographical map or photographic plottings data, or descriptions that would allow an individual to determine the location of an archeological site.
- b) The address or site location of historic structures or other non-archeological cultural resources nominated for or listed in the National Register of Historic Places or registered as State Archeological Landmarks, if the owner of the property has specifically requested that such information not be distributed to the general public.
- c) The site location of cemeteries determined by the commission to be at risk of harm.

#### 24.14 (RESERVED)

#### 24.15 Access to both Public and Restricted Cultural Resource Information.

All persons desiring to view or use RCRI compiled and maintained by the commission, in its libraries, files, and maps, or within the THSA database must be approved through the commission's application process as defined in Sections 24.17 and 24.19 of this title (relating to Restricted Information Access Criteria and Application Submission and Review Procedures), and agree to abide by the rules of usage established by an RCRI Access Agreement. No access agreement document is needed for persons wishing to access public information in the THSA database or the libraries or files of the commission if restricted information is not contained within those materials. Persons wishing to view or use the RCRI data must submit a written application supplied by the commission, and sign an RCRI Access Agreement if approved for RCRI access.

#### 24.16 (RESERVED)

#### 24.17 Criteria for Access to Restricted Information.

- (a) Qualified applicants meeting one or more of the following criteria may be granted access by the THSA Program Director:
  - (1) Meet the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) for Archeology.

- (2) Meet the definition of professional archeologist, or principal investigator as defined by Section 26.5 of this title.
  - (3) Be a member in good standing of the Texas Archeological Stewardship Network.
- (b) Applications from persons not meeting the criteria set forth in Section 24.17(a) of this title (relating to Restricted Cultural Resource Information Access Qualifications) must have a clear and legitimate scientific or legal interest in being granted access to RCRI. Their applications will be reviewed by the access committee, and access will be granted or denied by the committee as specified in Section 24.19 of this title (relating to Restricted Information Application Submission and Review Procedures).
  - (c) If an applicant is denied access to RCRI, the applicant may appeal that decision before the commission at one of its regularly scheduled public meetings. Appeals must be submitted in writing to the commission at least 30 days prior to a scheduled meeting of the commission.

#### 24.18 (RESERVED)

#### 24.19 Restricted Information Application Submission and Review Procedures.

- (a) Application forms. All persons requesting access to RCRI must complete and submit the application form provided by the commission. This application form must indicate the type of information to which access is desired, the nature of the proposed research and any special user requirements during access, the name of the person desiring access, when access is needed, and for how long.
- (b) Curriculum vitae. To prove his or her credentials for access, an applicant must also submit a current curriculum vitae to the commission, if such a document is not already on file with the commission.
- (c) Initial review by the THSA Program Director. The THSA Program Director reviews all applications and vitae for completeness, and will notify the applicant of any additional information required.
- (d) Consideration of qualified application. When all required application information has been received and reviewed, the THSA Program Director will either rule on access relative to criteria set forth in Section 24.17(a) of this title (relating to Restricted Cultural Resource Information Access Qualifications), or forward the application to the access committee. If the applicant is approved for RCRI access under Section 24.17(a) of this title, the THSA Program Director will notify the applicant of this approval within 10 working days. The access committee will review all applicants for qualification under Section 24.17(b) of this title, and the THSA Program Director will notify the applicant of the committee's decision.

- (e) Denial of application. If an application is denied, the THSA Program Director will notify the applicant in writing of the reasons for denial. Any appeals of these decisions must be made before the commission at one of its regularly scheduled public meetings.
- (f) Access agreement. Once any application has been approved by either the THSA Program Director, access committee, or commission, an access agreement will be forwarded to the applicant. The applicant must then sign the access agreement and return it to the commission. Once received, the THSA Program Director will register the applicant as an RCRI user, and a written notice documenting registration will be forwarded to the registered RCRI user. When appropriate, the commission will also supply the applicant with a THSA Access Account, which will enable the applicant to access the restricted portion of the THSA database. A copy of the access agreement document will be kept on file at the Texas Historical Commission.
- (g) The commission may conduct an investigation to verify any information submitted on an application.
- (h) False information. If the access committee determines that an applicant provided false information on an application, the committee will take the following actions.
  - (1) Recommend denial of the application.
  - (2) Notify the applicant of the information considered to be false and give the applicant a reasonable period of time, not to exceed thirty (30) days, to respond.
  - (3) If, upon examination of the applicant's response, or failure to respond, the access committee determines that false information was knowingly provided on the application, the access committee may recommend to the commission that the applicant be denied access to RCRI for a period not to exceed two years.
  - (4) The commission may consider and act on this recommendation, upon due notice to the applicant, at any regular or called meeting of the commission.

#### 24.20 (RESERVED)

#### 24.21 Memoranda of Understanding and/or Agreement for RCRI Access.

The commission may enter into memoranda of understanding or agreement with state or federal agencies, political subdivisions of the state, private institutions, and/or individuals for the purpose of establishing RCRI access arrangements.

#### 24.22 (RESERVED)

#### 24.23 Access Committee Procedures.

- (a) Access committee. The affirmative vote of a simple majority of the committee members is necessary for any action to be taken. No absence in the membership of the access committee shall impair the ability of the committee to exercise all rights and perform all duties.

- (b) Committee meeting schedule. Meetings of the committee are held at the call of the THSA Program Director, or whenever requested by one of the members.
- (c) Conflict of interest provision for committee members. Any committee member who has, will have, or later acquires an interest, direct or indirect, in any transaction involving an application scheduled to be reviewed by the committee, or approved by the committee, shall immediately disclose the nature and extent of such interest in writing to the THSA Program Director as soon as he or she has knowledge of such actual or prospective interest. Upon such disclosure, this member shall not participate in any deliberations or actions by the committee that directly or indirectly affects that transaction or interest.