



May 8, 2000

Ms. Diane C. Wetherbee
City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2000-1774

Dear Ms. Wetherbee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135448.

The City of Plano (the "city") received a request for "all correspondence between [city] staff and representatives of 15% Guaranteed Plus Land Income Fund or the Hall Financial Group pertaining to the zoning and/or purchase of land in the vicinity of the Marsh Ln. and Parker Rd. intersection and the Arbor Hills Nature Preserve." You state that the city "has made available for public inspection and copying all materials" requested by the requestor, except a document you have submitted for our review, marked as exhibit "B." You assert that exhibit "B" 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that exhibit "B" is made confidential by section 154.073 of the Civil Practice and Remedies Code. In pertinent part, this provision states:

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 or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

Civ. Prac. & Rem. Code § 154.073(b). You explain that exhibit “B” is a record made at a mediation held December 27, 1999, in which the city was a participant. Mediation is an alternative dispute resolution procedure. *See* Civ. Prac. & Rem. Code § 154.023. This office has interpreted the statutory predecessor to the above-cited provision as making information prepared during an alternative dispute resolution procedure confidential. Open Records Decision No. 658 (1998). We therefore agree that exhibit “B” is excepted from required public disclosure under section 552.101, and must not be released.¹ Because section 552.101 is dispositive, we do not address the section 552.103 assertion.

In summary, you must withhold exhibit “B” in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code.

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).

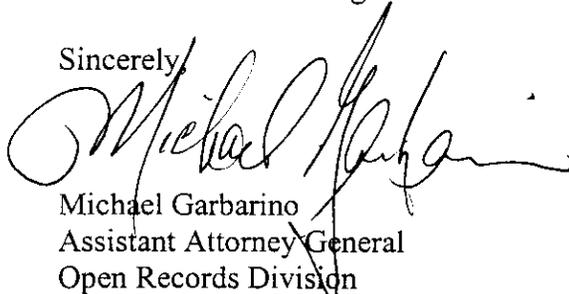
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

¹You state that a final settlement agreement “is currently being routed between the parties for execution.” We note that the final settlement agreement is not made confidential by the above-cited provision. *See Id.*; Civ. Prac. & Rem. Code § 154.073(d); Gov’t Code § 552.022(a)(18).

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 135448

Encl. Submitted documents

cc: Mr. Ryan Bauer
Plano Star Courier
801 East Plano Parkway
Plano, Texas 75074
(w/o enclosures)