



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2004

Ms. Carol Longoria  
Public Information Coordinator  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2004-5817

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205092.

The University of Texas at Austin (the "university") received a request for a copy of a mediation report authored by the university's Center for Public Policy Resolution (the "center"). 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. We have also received and considered the requestor's argument that the mediation report should not be excepted from disclosure. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

We first note that the information at issue is subject to section 552.022 of the Government Code. This section provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the information at issue is a completed report made of, for, or by a governmental body. You must release this report under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. You do not seek to withhold the report under section 552.108. Rather, you claim that the report is excepted from disclosure under sections 552.101 and 552.103. Section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver). Thus, you may not withhold the report under section 552.103. However, we will address your claim under section 552.101.

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. In this regard, section 2009.051(a) of the Government Code provides that a governmental body "may develop and use alternative dispute resolution procedures." Any such alternative dispute resolution procedures "must be consistent with Chapter 154, Civil Practice and Remedies Code." Gov't Code § 2009.051(a). You contend that report you have submitted to us for review is confidential under section 2009.054(b) of the Government Code, which provides as follows:

(1) a communication relevant to the dispute, and a record of the communication, made between an impartial third party and the parties to the dispute or between the parties to the dispute during the course of an alternative dispute resolution procedure are confidential and may not be disclosed unless all parties to the dispute consent to the disclosure; and

(2) the notes of an impartial third party are confidential except to the extent that the notes consist of a record of a communication with a party and all parties have consented to disclosure in accordance with Subdivision (1).

Gov't Code §2009.054(b). Thus, by statute, confidentiality is limited to communications made in "alternative dispute resolution procedure[s]" and "notes of an impartial third party."

You state that the information at issue is a mediation report authored by the center, the impartial third party in an Alternative Dispute Resolution ("ADR") process being conducted at the University of Texas-Pan American. You explain that the report represents the preliminary information gathering stage of the ADR process. Furthermore, you assert that the report consists of notes of the center, as well as information gathered from communications between the center and disputants. Based on your representations and our review of the submitted information, we find that the report is confidential under section 2009.054(b) of the Government Code. *See* Open Records Decision No. 658 at 5

(1998) (discussing predecessor statute to section 2009.054). If all parties to the mediation have consented to the release of the report, then it must be released to the requestor. If all parties to the mediation have not consented to the release of the report, the university must withhold the report under section 552.101 of the Government Code in conjunction with section 2009.054.

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,

A handwritten signature in black ink, appearing to read 'W. David Floyd', written in a cursive style.

W. David Floyd  
Assistant Attorney General  
Open Records Division

WDF/sdk

Ref: ID# 205092

Enc. Submitted documents

c: Mr. Timothy Meline  
1201 Sandpiper #11  
McAllen, Texas 78504  
(w/o enclosures)