



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2010

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2010-14458

Dear Ms. Grace:

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# 397592.

The City of Austin (the "city") received two requests from different requestors for information pertaining to a proposed settlement agreement. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have marked a portion of the submitted information as non-responsive. We agree the information you have marked is not responsive to the present requests because it was created after the dates of the city's receipt of the requests. The city need not release non-responsive information in response to these requests, and this ruling will not address that information.

Section 552.101 of the Government Code excepts 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. 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 state that the responsive information consists of records made at an alternative dispute resolution procedure conducted pursuant to Rule CV-88, which 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.

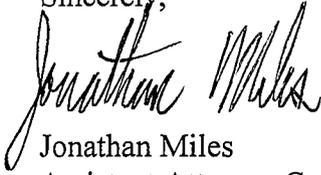
W. D. Tex. Loc. R. CV-88(i). You inform us that the parties to the alternate dispute resolution procedure have not agreed to waive the confidentiality of the communications and information at issue. Based on your representations and our review of the responsive information, we conclude that the responsive information is confidential under rule CV-88 and must be withheld from disclosure on that basis under section 552.101 of the Government Code.

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, 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 397592

Enc. Submitted documents

c: Requestor
(w/o enclosures)