



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2010

Ms. Jennifer C. Cohen
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78765-4087

OR2010-15171

Dear Ms. Cohen:

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# 395835 (ORA # 10-1687).

The Texas Department of Public Safety (the "department") received two requests from the same requestor for information pertaining to a specified complaint investigation. You state the department has released some of the requested information. You claim the submitted 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.

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. This section encompasses information made confidential by other statutes, such as section 154.073 of the Civil Practice and Remedies Code, which states in pertinent part:

(a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

(b) 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(a), (b). You claim the submitted audio recordings consist of mediation records that are confidential under section 154.073. You have provided a copy of the department's agreement to mediate, signed by the mediation participants. Based on your representations and our review of the information at issue, we find the audio recordings we have indicated consist of information generated during an alternative dispute resolution procedure governed by chapter 154 of the Civil Practice and Remedies Code. Accordingly, the audio recordings we have indicated must be withheld under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code. However, we find you have failed to demonstrate the remaining audio recordings consist of either a communication relating to the subject matter of the dispute made by a participant in an alternative dispute resolution procedure or a record made at such a procedure. *See id.* § 154.073(a)-(b). We therefore conclude the remaining audio recordings are not confidential under section 154.073 and may not be withheld on that basis under section 552.101.

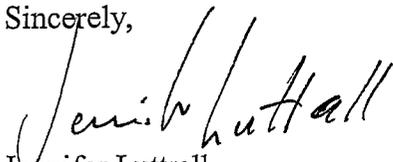
Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note one of the remaining audio recordings contains information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have indicated pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the audio recordings we have indicated under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code. The department must also withhold the information we have indicated in one of the remaining audio recordings pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 395835

Enc. Submitted documents

c: Requestor
(w/o enclosures)