



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2012

Mr. Braden W. Metcalf  
Nichols, Jackson, Dillard, Hagar & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR2012-00298

Dear Mr. Metcalf:

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# 441542 (Reference number 52084).

The Dallas Central Appraisal District (the "district"), which you represent, received a request for the taped transcripts of two specified arbitrations and the sales comparison sheets for all arbitrations conducted by the district for residential properties valued over two million dollars. You have informed us the district does not have any information responsive pertaining to one of the specified arbitrations.<sup>1</sup> 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 ["ADR"] procedure, whether

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 [ADR] 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). Further, this office has found that communications during a formal settlement process were intended to be confidential. Open Records Decision No. 658 at 4 (1998). You state the submitted audio recording is a recording of the actual arbitration proceeding. You also state the sales comparison sheets are compiled for and used at the ADR proceedings. You further state the sales comparison sheets “would not have been created but for the ADR proceeding and were used only for that ADR proceeding.” Based on your representations and our review, we agree the submitted information consists of communications made at or during an ADR procedure. Therefore, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code.<sup>2</sup>

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

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<sup>2</sup>As our ruling is dispositive for the submitted information, we need not address your remaining argument against its disclosure.

Ref: ID# 441542

Enc. Submitted documents

c: Requestor  
(w/o enclosures)