



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2012

Ms. Theresa Cullen  
Deputy City Attorney  
City of El Paso  
2 Civic Center Plaza, 9<sup>th</sup> Floor  
El Paso, Texas 79901

OR2012-14452

Dear Ms. Cullen:

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# 465024.

The City of El Paso (the "city") received a request for reports related to certain city-owned commercial property. You claim 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 information you submitted.

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 exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 154.073 of the Civil Practice and Remedies Code, which provides in part:

(a) [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.

Civ. Prac. & Rem. Code § 154.073(a)-(b). In Open Records Decision No. 658 (1998), this office found communications during a formal settlement process were intended to be confidential. *See* Open Records Decision No. 658 at 4; *see also* Gov't Code § 2009.054(c). You state the submitted documents are related to a settlement agreement to which the city is a party. You also state the documents were used by the parties in discussions of the settlement agreement. You believe the documents are “a communication relating to the subject matter of the civil dispute referenced [by the requestor].” You have not explained, however, how or why the submitted documents constitute “communication[s] . . . made by a participant in an alternative dispute resolution procedure[,]” so as to be encompassed by section 154.073(a). Civ. Prac. & Rem. Code § 154.073(a). Likewise, you have not demonstrated the documents at issue constitute a “record made at an alternative dispute resolution procedure[,]” so as to fall within the scope of section 154.073(b). *Id.* § 154.073(b). Thus, having considered your representations and reviewed the submitted information, we conclude you have not demonstrated the information at issue is confidential under section 154.073 of the Civil Practice and Remedies Code. Therefore, the city may not withhold any of the information at issue on that basis under section 552.101 of the Government Code. As the city claims no other exception to disclosure, the submitted information must be released.

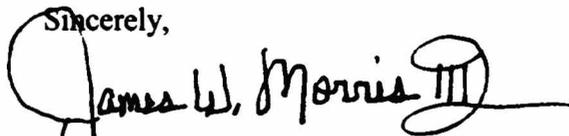
We note some of the submitted information may be protected by copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1978); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 465024

Enc: Submitted documents

c: Requestor  
(w/o enclosures)