



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2013

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2013-03476

Dear Ms. Cost:

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# 478735 (PIR No. 12-3986).

The Texas Department of Public Safety (the "department") received a request for (1) information pertaining to a specified investigation; (2) certain information regarding the requestor's "deficiency"; (3) records from a specified mediation and its resolution; and (4) all information submitted to the requestor's employee file by her supervisors during a specified period of time. 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.

Initially, we note you have only submitted information responsive to the request for records from a specified mediation and its resolution. You have not submitted for our review any information pertaining to the remaining categories of information requested. To the extent any such information was maintained by the department on the date the department received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Id. § 552.101. This exception encompasses information other statutes make confidential. Section 154.073 of the Civil Practice and Remedies Code provides in relevant 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 related 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 information is confidential under section 154.073 because it is records of an informal facilitated conflict resolution meeting, which is one of the department's internal dispute resolution processes. You state section 411.0073 of the Government Code requires the department to establish procedures for a department employee to resolve an employment-related grievance through mediation, if the employee chooses. *See* Gov't Code § 411.0073(a). You explain that such procedures are found in the department's General Manual and include several types of dispute resolution processes. Furthermore, you state the department's grievance procedures operate under the statutory provisions concerning alternative dispute resolution proceedings found in chapter 154 of the Civil Practice and Remedies Code. The department's General Manual states that confidentiality during an employment-related grievance process will be maintained to the extent permitted under chapter 154. Thus, you argue the records at issue are confidential under section 154.073. However, upon review, we find that although section 411.0073 requires the department to establish procedures for resolution of personnel disputes, it does not authorize the department to make any records confidential or specify that any records created in such proceedings are confidential under section 154.073 as provided in the General Manual. In addition, the department has not cited to any statutory authority that permits it to make such records confidential.¹ Lastly, the department has not explained how section 154.073 otherwise applies to such records. Therefore, the department may not withhold the submitted information pursuant to section 154.073 of the Civil Practice and

¹We note pursuant to subsections (b) and (c) of section 552.303 of the Government Code, we requested additional information from you as to the authority for the department's adoption of its dispute resolution processes. *See* Gov't Code § 552.303. Moreover, although chapter 2009 of the Government Code addresses a governmental body's use of alternative dispute resolution, the department does not argue the applicability of this statute to its internal department employee dispute resolution procedures or to the submitted information. *See id.* ch. 2009.

Remedies Code. As the department raises no other exceptions to disclosure, the submitted 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,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long horizontal line extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/bhf

Ref: ID# 478735

Enc. Submitted documents

c: Requestor
(w/o enclosures)