



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2013

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

OR2013-14280

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# 496437 (PIR # 13-2157).

The Texas Department of Public Safety (the "department") received a request for all records, surveys, interview notes, e-mails, and other documents used during a specified facilitation process. 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 exception encompasses information made confidential by other statutes. You state the submitted information consists of records generated during the department's internal alternative dispute resolution process. You explain the mediation process for employee complaints is governed by section 411.0073 of the Government Code, which provides:

- (a) The [Public Safety Commission] shall establish procedures for [a department] employee to resolve an employment-related grievance covered by Section 411.0072 through mediation if the employee chooses. The procedures must include mediation procedures and establish the

circumstances under which mediation is appropriate for an employment-related grievance.

(b) Except for Section 2008.054, Chapter 2008, as added by Chapter 934, Acts of the 75th Legislature, Regular Session, 1997, does not apply to the mediation. The mediator must be trained in mediation techniques.

Id. § 411.0073. You state section 411.0073(a) establishes procedures for a department employee to resolve an employment-related grievance through mediation, if the employee chooses. *See id.* You also state the mediation process for employee complaints under section 411.0073 is subject to the confidentiality provided in section 2009.054 of the Government Code. We note chapter 2008, as added by chapter 934 of the 75th Legislature, referenced in section 411.0073(b) was renumbered to chapter 2009 of the Government Code by the 76th Legislature. Act of April 28, 1999, 76th Leg., R.S., ch. 62, § 19.01(55), 1999 Tex. Gen. Laws 127, 415. We agree pursuant to section 411.0073(b), section 2009.054 of the Government Code applies to the department's employment-related grievance process. Section 2009.054 provides:

(a) Sections 154.053 and 154.073, Civil Practice and Remedies Code, apply to the communications, records, conduct, and demeanor of the impartial third party and the parties.

(b) Notwithstanding Section 154.073(e), Civil Practice and Remedies Code:

(1) a communication relevant to the dispute, and a record of the communication, made between an impartial third party and the parties to the dispute or between the parties to the dispute during the course of an alternative dispute resolution procedure are confidential and may not be disclosed unless all parties to the dispute consent to the disclosure; and

(2) the notes of an impartial third party are confidential except to the extent that the notes consist of a record of a communication with a party and all parties have consented to disclosure in accordance with Subdivision (1).

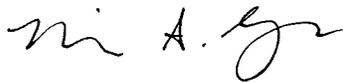
Id. § 2009.054(a)-(b). Section 2009.054(b) provides for the confidentiality of communications made during an alternative dispute resolution procedure and the notes of the impartial third party. *See id.* § 2009.054(b). As noted above, you state the submitted information consists of records generated during the department's employment-related grievance process regarding the requested matter. We note the information consists of communications made during the grievance process and notes of the impartial third party.

Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 2009.054(b) of the Government Code.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 496437

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not consider your remaining arguments against disclosure of the submitted information.