



August 7, 2002

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

OR2002-4338

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166892.

The Texas Department of Public Safety (the “department”) received a request for copies of police employee grievances filed since May 1, 1999 through the present, information pertaining to the final disposition of each grievance, and the police employees grievance policy. You state that you are releasing copies of complaints, which you equate with grievances, as well as information pertaining to the final disposition of each complaint. You indicate through correspondence that you sent to the requestor that you are also releasing copies of the grievance policies. You claim, however, that the submitted information pertaining to “complaints submitted via the mediation process” is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that the information at issue is excepted from disclosure pursuant to section 552.101 in conjunction with section 154.073 of the Civil Practice and Remedies Code.¹ Section 154.073 states in pertinent part:

(a) Except as provided by Subsections (c), (d), and (e),² 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.

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

² Subsections 154.073(c), (d), and (e) are inapplicable in this instance.

(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). We note that section 411.0073 of the Government Code establishes procedures for a department employee to resolve an employment-related grievance through mediation if the employee chooses. *See* Gov't Code § 411.0073(a). These procedures must include mediation procedures and establish the circumstances under which mediation is appropriate for an employee-related grievance. *See id.* You state that the mediation process for employee complaints, adopted as part of the grievance procedure required by section 411.0073, operates under the statutory provisions concerning alternative dispute resolution ("ADR") found in chapter 2009 of the Government Code and chapter 154 of the Civil Practice & Remedies Code. You also state that the information at issue is from the department's internal mediation process and is contained in alternative dispute resolution files maintained by the department. We, thus, understand that the information at issue is comprised of mediation request forms and mediator reports that appear to have been generated during a formal ADR process which is governed by chapter 2009 of the Government Code and chapter 154 of the Civil Practice & Remedies Code. Thus, based on our review of your representations and this information, we agree that the information is encompassed by and made confidential by section 154.073. Accordingly, we conclude that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practices and Remedies Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 166892

Enc. Submitted documents

cc: Mr. Robert Glover
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(w/o enclosures)