



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

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

OR2009-07618

Dear Ms. Smith:

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# 344741 (DPS OR 09-0572).

The Texas Department of Public Safety (the "department") received a request for the employment and civil service records of fourteen named individuals. You state the department's human resources bureau and internal affairs office are responding to this request separately for any information in their possession. You claim the submitted mediation records are 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 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 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

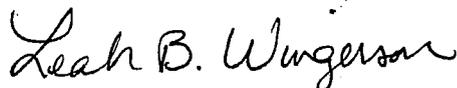
may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

Civ. Prac. & Rem. Code § 154.073(a), (b). You claim the submitted mediation records are confidential under section 154.073. You state 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 have previously stated to this office 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 154 of the Civil Practice and Remedies Code. You indicate the submitted mediation records pertain to the department's internal mediation process and are contained in ADR files maintained by the department. We, thus, understand the submitted information consists of mediation evaluations and mediator reports that appear to have been generated during formal ADR processes governed by chapter 154 of the Civil Practice and Remedies Code. Therefore, based on your representations and our review of the submitted information, we agree the mediation records are confidential under section 154.073 of the Civil Practice and Remedies Code, and must be withheld under section 552.101 of the Government Code.

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 at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 344741

Enc. Submitted documents

c: Requestor
(w/o enclosures)