



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2009

Mr. Jim D. McLeroy  
Attorney at Law  
P.O. Box 657  
Sulphur Springs, Texas 75483

OR2009-12515

Dear Mr. McLeroy:

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# 354555.

The City of Commerce (the "city"), which you represent, received a request for copies of mediation documents pertaining to a settlement between the city and a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions 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. 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 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.

....

(d) A final written agreement to which a governmental body, as defined by Section 552.003, Government Code, is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code.

Civ. Prac. & Rem. Code § 154.073(a), (b), (d). Further, in Open Records Decision No. 658 (1998), this office found that communications during the formal settlement process were intended to be confidential. Open Records Decision No. 658 at 4 (1998); *see also* Gov't Code § 2009.054(c). You state that the submitted information consists of a settlement agreement created in and as a result of an alternative dispute resolution proceeding. You assert that the settlement agreement is not yet final because it is conditional and the conditions have not been met. Further, you indicate that the city council has not adopted the settlement agreement. Based on your representations and our review, we agree that the submitted information was made during the course of an alternative dispute resolution proceeding. Further, we find that section 154.073(d) does not apply in this instance. Thus, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code.<sup>1</sup>

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining claim against disclosure.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)