



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2013

Mr. Warren M. S. Ernst
Chief of the General Counsel Division
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-01112

Dear Mr. Ernst:

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# 476694.

The City of Dallas (the "city") received a request for correspondence pertaining to the Dallas Wave white water feature during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code, as well as privileged under rule 408 of the Texas Rules of Evidence. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was not created during the specified time period. This ruling does not address the public availability of any information

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

that is not responsive to the request and the city is not required to release such information in response to this request.

Section 552.101 of the Government Code exempts 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 protected by other statutes, such as section 154.073 of the Civil Practice and Remedies Code, which provides, in 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.

Civ. Prac. & Rem. Code § 154.073(a). You state prior to the city's receipt of the request for information, the city was under contract with Schrickel, Rollins and Associates, Inc. ("SRA") for master planning and design services and construction drawings and administration of a white water feature. You state before final acceptance, the city had concerns with the design and construction of the project. You inform us SRA requested the city attend mediation with SRA regarding its concerns. You state the city is currently in mediation with SRA pertaining to the city's concerns, and you inform us the city and SRA have retained a third party to act as mediator. You explain settlement has not been reached between the city and SRA. You state the submitted information consists of communications between the city, SRA, and SRA's attorneys, relating to the subject matter of the dispute. Based on your representations and our review of the information, we agree the submitted information consists of communications relating to the subject matter of a dispute made by a participant in an alternative dispute resolution procedure. Therefore, 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.²

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,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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 cursive script that reads "Claire Morris Sloan". The signature is written in black ink and is positioned above the typed name.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 476694

Enc. Submitted documents

c: Requestor
(w/o enclosures)