



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2014

Mr. David V. Overcash
Counsel for the Town of Fairview
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2014-06077

Dear Mr. Overcash:

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# 519338 (Town File No. C10001PIR20140121-01).

The Town of Fairview (the "town"), which you represent, received two requests from the same requestor for a specified mediated settlement agreement. You claim that 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. Section 552.101 encompasses section 154.073 of the Civil Practice and Remedies Code, which states:

(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 . . . 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 [the Act].

Civ. Prac. & Rem. Code § 154.073(a)-(b), (d). You inform us the submitted information consists of a mediated settlement agreement (“MSA”) drafted by a mediator at an alternative dispute resolution (“ADR”) procedure and was a communication relating to the subject matter of a civil dispute made by participants in an ADR procedure. You state, “as demonstrated by the express terms of the MSA, other documents containing additional terms and the necessity of additional approvals by the [t]own establish that the MSA itself was merely an ADR record, and not a final written agreement as contemplated by . . . section 154.073(d)[.]” Based on your representations and our review, we find the information at issue consists of a record made at an alternative dispute resolution procedure. Further, we find this record is not a final written agreement subject to subsection (d). Thus, the submitted information is confidential under section 154.073(b) of the Civil Practice and Remedies Code, and the town must withhold it under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 519338

Enc. Submitted documents

c: Requestor
(w/o enclosures)