



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2015

Ms. Aimee Alcorn
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469

OR2015-13562

Dear Ms. Alcorn:

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# 570151 (City File No. 306).

The City of Corpus Christi (the "city") received a request for any and all settlements to civil court cases brought against the city that settled between January 1, 2014 and December 31, 2014, including settlement amounts paid, parties' names, and the original complaints.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Moreover, although you take no position as to whether some of the submitted information is excepted under the Act, you state release of some of the information may implicate the proprietary interests of third parties. Accordingly, you state you notified the third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not

¹You inform us, in response to the requestor's request for information, the city sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code §§ 552.2615 (providing governmental body shall provide requestor with estimate of charges if charges exceed \$40), .263(a) (providing governmental body may require a deposit or bond for payment of anticipated costs if the governmental body has provided the requestor with the required written itemized statement detailing the estimated charge for providing the copy and if the charge is estimated to exceed \$100). You state the city received the deposit on April 16, 2015. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

be released. *See* Gov't Code §§ 552.304 (interested third party may submit comments stating why information should or should not be released), .305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

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. 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 information in Exhibit B consists of records made at alternative dispute resolution procedures, namely mediation. You state, as demonstrated by the express terms of the agreements, other documents and additional approval by the city's council are needed to finally resolve the cases. You assert because of this, the documents in Exhibit B are merely records made at alternative dispute resolution procedures and are not final agreements. Based on your representations and our review, we find the information at issue consists of records made at alternative dispute resolution procedures. Further, we find these records are not final written agreements subject to subsection (d). Thus, Exhibit B is confidential under section 154.073(b) of the Civil

Practice and Remedies Code, and the city must withhold it under section 552.101 of the Government Code.

You state the documents in Exhibit C implicate the proprietary interests of third parties. We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any third party explaining why the information at issue should not be released. Therefore, we have no basis to conclude a third party has protected proprietary interests in the information at issue. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the information in Exhibit C on the basis of any proprietary interests a third party may have in the information.

In summary, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 154.073 of the Civil Practice and Remedies Code. The remaining information must be released.

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 'Mili Gosar', with a long, sweeping horizontal line extending to the right.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 570151

Enc. Submitted documents

c: Requestor
(w/o enclosures)