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ATTORNEY GENERAL OF TEXAS

December 11, 2015

Mr. Christopher Gregg
Counsel for the City of Webster
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2015-26033

Dear Mr. Gregg:

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# 590813.

The City of Webster (the "city"), which you represent, received a request for information pertaining to a specified settlement agreement. The city claims the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.110 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The submitted information includes a settlement agreement that the city inform us contains a restriction on prohibiting the city from publicizing the existence or terms of the agreement. However, we note information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a

contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the requested information falls within an exception to disclosure, the city must release it, notwithstanding any expectations or agreement specifying otherwise.

We next note the submitted information is subject to section 552.022 of the Government Code, which provides, in part, the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(3), (18). The submitted settlement agreement is subject to section 552.022(a)(18), and the remaining information is subject to section 552.022(a)(3). The city asserts this information is excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the submitted information under section 552.103. Although section 552.110 of the Government Code generally makes information confidential under the Act, this section protects only the interests of the third parties that have provided information to a governmental body, not those of the governmental body itself. *See* Gov't Code § 552.110 (excepts from disclosure trade secrets or commercial or financial information obtained from person). Therefore, we do not address the city's argument under section 552.110. Nevertheless, section 552.101 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of section 552.101 to 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. This section encompasses section 154.073 of the Civil Practice and Remedies Code, which provides, in relevant part, the following:

(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.

...

(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 [the Act].

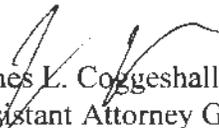
Civ. Prac. & Rem. Code § 154.073(a), (d). In Open Records Decision No. 658 (1998), this office found communications during the formal settlement process were intended to be confidential. *See* ORD 658 at 4. Section 154.073(d) does not except from required public disclosure a governmental body’s mediated final settlement agreement. *See* Civ. Prac. & Rem. Code § 154.073(d). Thus, the submitted settlement agreement is not confidential under section 154.073 of the Civil Practice and Remedies Code. The remaining information consists of internal accounting documents and billing statements between the city and the Texas Municipal League Intergovernmental Risk Pool related to the payment of the settlement agreement. Upon review, we find the city has failed to establish this information consists of communications made during an alternative dispute resolution procedure. Therefore, the remaining information is also not confidential under section 154.073. Accordingly, the city may not 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 but, instead, must release it the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bhf

Ref: ID# 590813

Enc. Submitted documents

c: Requestor
(w/o enclosures)