



April 5, 2001

Ms. Judith A. Hunter
Paralegal
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2001-1372

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145687.

The City of Georgetown (the "city") received a request for two categories of information regarding the proposed Pecan Branch Wastewater Treatment Plant and the agendas and minutes of all meetings held by the city's Economic Development Commission (the "commission") since the commission's inception. You state that you have released most of the information responsive to the request to the requestor. You claim, however, that the submitted information is excepted from disclosure under section 552.107(1) of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we address your assertion that some of the submitted information contains "information regarding numerous subjects not requested by the *Austin American-Statesman*." The city has not marked the nonresponsive information. We note that the city need only release information responsive to the requestor's request. Thus, you may redact any information not responsive to the request for information at issue here.

Next, we address your contention that the notes in Exhibit E are personal notes that are not subject to release under the Public Information Act (the "Act"). This office has concluded that personal notes are not necessarily excluded from the definition of "public

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

information” and may be subject to the Act.² This office has additionally observed that certain factors are relevant, although not exhaustive, in deciding whether a document is essentially a governmental or personal document: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the governmental body required its preparation; and whether its existence was necessary to or in furtherance of official business. *See* Open Records Decision No. 635 (1995).

While you state that “[t]hese notes were prepared by the City Attorney as memory aids and are her handwritten notes made solely for her personal use,” you also state that they “were prepared by the City Attorney in the normal course of her work as legal adviser to the City Council.” We conclude that the notes contained in Exhibit E deal with a governmental employee’s official business as they relate to the City Attorney’s work as legal adviser to the City Council. Therefore, based on our review of the submitted information, we believe that the handwritten notes in Exhibit E consist of “information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business” and are subject to disclosure under the Act. *See* Gov’t Code § 552.002.

Next, we address the attorney fee bills contained in Exhibit B. Attorney fee bills, such as those at issue here, are subject to section 552.022(a) of the Government Code, which provides in pertinent part as follows:

- (a) 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 under this chapter unless they are expressly confidential under other law:

....

- (16) information that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege.

Gov’t Code § 552.022(a)(16). Under section 552.022, fee bills must be released unless they are expressly confidential under other law. Section 552.107 of the Government Code, which excepts information within the attorney-client privilege, is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. *See* Open Records Decision No. 630 at 4 (1994) (governmental body may waive section 552.107(1)). However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. Recently, the Texas Supreme Court held that “[t]he Texas Rules of Civil

²*See, e.g.*, Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members public are public information), 450 (1986) (notes of appraisers taken in the course of teacher appraisals were public information), 120 (1976) (faculty members’ written evaluations of doctoral student’s qualifying exam are subject to act). *But see* Open Records Decision Nos. 635 (1995) (calendar purchased and maintained by a commission employee who had sole access to it was not subject to the act), 77 (1975) (personal notes made by individual faculty members for their own use as memory aids were not subject to the act).

Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001). You state that you have released the fee bills but claim that the narratives are excepted from disclosure. Thus, we will determine whether the narratives are confidential under Rule 503.

Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or
- (E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *See* Tex. R. Evid. 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the document containing privileged information is confidential under Rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in

Rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.–Houston [14th Dist.] 1993, no writ); *see also* Tex. R. Evid. 511 (waiver of privilege by voluntary disclosure).

You state that the narratives at issue here contain references to “strategies and negotiations being discussed and reviewed by the law firm with City staff.” After reviewing your arguments and the attorney billing statement submitted to this office, we conclude that the entries contained therein do not constitute confidential communications made for the purpose of facilitating the rendition of professional legal services to the client. Therefore, the city may not withhold the narratives contained in the attorney billing statements pursuant to Rule 503. The city must release the attorney billing statements in their entirety to the requestor.

We now turn to the document submitted as Exhibit C. We note that another category of expressly public information under section 552.022 is “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108” Gov’t Code § 552.022(a)(1). The information you have submitted in Exhibit C is a completed report made by the City Attorney. Therefore, as prescribed by section 552.022, the submitted report must be released to the requestor unless it is confidential under other law.

You claim that the responsive information in Exhibit C, which you have marked, constitutes a privileged attorney-client communication. As discussed above, section 552.107 is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. *See* Open Records Decision No. 630 at 4 (1994) (governmental body may waive section 552.107(1)). However, the Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *See In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001). Thus, we will determine whether the information that you have marked as responsive in Exhibit C is confidential under Rule 503 of the Texas Rules of Evidence.

Having carefully reviewed the information in Exhibit C that you have marked as responsive to this request, we conclude that it is not confidential under Texas Rule of Evidence 503. Therefore, the city must release the responsive information in Exhibit C to the requestor.

Finally, we address the documents submitted in Exhibits D and E. Section 552.107(1) of the Government Code excepts information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]” While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office determined that section 552.107 cannot be applied as broadly as written to information in the

possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except from disclosure purely factual information such as the recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* at 5. We determine the applicability of section 552.107(1) on a case-by-case basis.

We find that the information in Exhibit D and most of the information in Exhibit E is not excepted from disclosure under section 552.107(1). We have marked the information in Exhibit E that may be withheld pursuant to section 552.107. The remaining responsive information in Exhibits D and E must be released to the requestor.

To summarize, we find that: 1) the city need only release information that is responsive to the requestor's request; 2) the handwritten notes in Exhibit E are subject to release under the Act; 3) the city must release the attorney billing statements in their entirety to the requestor; 4) the city must release the information in Exhibit C that it has marked as responsive to this request; and 5) the city may withhold the information we have marked in Exhibit E pursuant to section 552.107. The city must release the remaining responsive information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/er

Ref: ID# 145687

Encl: Marked documents

cc: Mr. Carter Nelson
Austin American-Statesman
203 East Main
Round Rock, Texas 78664
(w/o enclosures)