



November 9, 2001

Mr. Gerald A. Burks
County Treasurer
County of Galveston
601 Tremont, Suite 306
Galveston, Texas 77550

OR2001-5190

Dear Mr. Burks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154014.

The County Treasurer of Galveston County (the "county treasurer") received a request for information relating to legal services provided to the county treasurer, including contracts or agreements with attorneys and their itemized billing records. You assert that the county treasurer is not subject to the Public Information Act (the "Act"), chapter 552 of the Government Code. You also claim an exception to disclosure under section 552.107 of the Government Code. We have considered the exception you raise and have reviewed the unredacted sample of responsive information you submitted.¹ We also received comments from the requestor.²

Initially, we address your contention that the county treasurer is not a governmental body under section 552.003 of the Government Code. We disagree. As an entity of county government that is administered by an elected official and supported by public funds, a county treasurer's office is clearly subject to the Act. *See* Gov't Code § 552.003(1)(A)(x); *see also* TEX. CONST. art. XVI, § 44 (providing for election and compensation of county treasurer); Local Gov't Code §§ 83.001, .006 (same); Open Records Decision No. 78 (1975) (holding county sheriff's office to be governmental body under statutory predecessor).

¹This letter ruling assumes that the sample of information you submitted is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes you to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²*See* Gov't Code § 552.304 (providing that any interested person may submit comments stating why information at issue in request for attorney general decision should or should not be released).

Moreover, section 552.201 of the Government Code provides that “[e]ach elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer’s office.” Gov’t Code § 552.201(b). Therefore, the Act requires the county treasurer to respond to this request for information. *See also id.* §§ 552.221, .228; Open Records Decision No. 664 (2000).

Next, we note that in requesting this decision, you did not submit a sample of the requested contracts or agreements with attorneys. Therefore, to the extent that the county treasurer’s office held or had access to responsive contracts or agreements when you received this request for information, you must release that information at this time. *See* Gov’t Code §§ 552.006, .301, .302; *see also* Gov’t Code § 552.022(a)(3).

The sample of responsive information that you submitted to this office falls within the scope of section 552.022 of the Government Code. Section 552.022 provides that

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) (emphasis added). Attorney fee bills must be released under section 552.022(a)(16) unless they are expressly confidential under other law. Section 552.107(1) of the Government Code, which excepts information that comes within the attorney-client privilege, is a discretionary exception to disclosure 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)). Thus, we do not address your arguments under section 552.107(1).

The attorney-client privilege also is found, however, in rule 503 of the Texas Rules of Evidence. The Texas Supreme Court recently 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*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will determine whether any of the submitted information is confidential under rule 503. Rule 503(b)(1) provides as follows:

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. 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. *Id.* 503(a)(5).

Thus, 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 information is privileged and confidential under rule 503, provided that 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).

We have reviewed the submitted sample of information and marked the information that is privileged under rule 503. You may withhold the marked information. The remaining information is not excepted from public disclosure and must be released.

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).

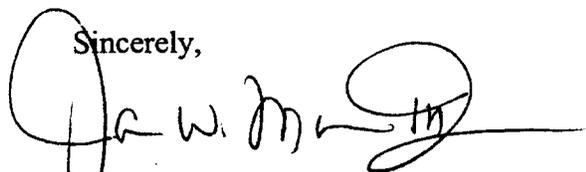
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dept. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 154014

Enc: Marked documents

c: Mr. Donald S. Glywasky
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454
(w/o enclosures)

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454
(w/o enclosures)