



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

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Mr. Eric V. Moyé  
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1717 Main Street, Suite 4400  
Dallas, Texas 75201-7388

OR2003-1089

Dear Mr. Moyé:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176736.

The Dallas Convention & Visitors Bureau (the "bureau"), which you represent, received a request for (1) all bureau "credit card statements and expenditure reports (including supporting documentation, receipts and justification reports) of all [bureau] credit card holders since January 1998," (2) all "employee expense reports submitted since January 1998," (3) a "list of all [bureau] dues-paying members," (4) a "list of all [bureau] vendors or service providers," (5) a "list of the [bureau's] governing policies, rules or bylaws," (6) all "contracts or booking records of Dallas Convention Center clients and conventions since October 1996," (7) all "monthly profit and loss statements since Oct. 1996," and (8) all "hourly billing statements to the [bureau] from outside legal representatives since January 1998." You state that you are releasing all documents responsive to categories three, four, five, and seven, and that you will release some of the information responsive to category eight. You state that you neither possess, own, nor have a right of access to information responsive to the portion of category six that request all contracts of Dallas Convention Center clients and conventions. You claim that all of the information responsive to categories one, two, and six, and some of the information responsive to category eight, is excepted from disclosure under sections 552.101, 552.104, 552.107, 552.110, 552.131, and 552.136 of the Government Code. We have considered your

arguments and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered the comments submitted to this office by the requestor's representatives. *See* Gov't Code § 552.304 (permitting submission of written comments stating reasons why the information at issue in a request for an attorney general decision should or should not be released).

As to your contentions regarding category six of the request for information, we note that section 552.002(a) of the Public Information Act (the "Act") defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). You state that the bureau does not possess, own, or have a right of access to any contracts for use of the Dallas Convention Center. You further state that the Dallas Convention Center is owned and operated by the City of Dallas, not the bureau, and that the bureau has no involvement in, and does not prepare or maintain, any contract entered into between organizations and the City of Dallas regarding the use of the Dallas Convention Center. Based upon these representations, we find that the requested contracts are not "public information" of the bureau, and thus, the bureau is not required to release the requested contracts.

We also note that the submitted documents contain information that falls within the purview of section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides that information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is not excepted from required disclosure unless they are made expressly confidential by law. Exhibit B contains account and voucher information relating to the expenditure of public funds by the bureau, which are subject to required release under section 552.022 unless they are confidential by law. You argue that exhibit B is excepted from release under sections 552.104, 552.110, and 552.131 of the Government Code. Section 552.104 states in pertinent part that:

The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

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<sup>1</sup>We 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.

Gov't Code § 552.104(b). Furthermore, this office has determined that sections 552.110 and 552.131 qualify as "other law" for purposes of section 552.022. Accordingly, we will consider your arguments that exhibit B is excepted from release under sections 552.104, 552.110, and 552.131 of the Government Code.

We also note that the information you have marked exhibit E consists of legal bills subject to section 552.022 of the Government Code. Section 552.022(a)(16) requires the release of "[i]nformation that is in a bill for attorney's fees unless the information is expressly made confidential under other law. You claim that portions of the responsive attorney fee bills are excepted from disclosure under section 552.107(1) of the Government Code. Section 552.107(1) 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. Open Records Decision No. 630 at 4 (1994) (governmental body may waive section 552.107(1)).

However, as you note, 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 Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will consider whether any of the information marked exhibit E is confidential under Rule 503. We will first consider your arguments under sections 552.104, 552.110, and 552.131.

You argue that exhibits B and C are excepted from release under section 552.104 of the Government Code. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. First, the governmental body must demonstrate that it has specific marketplace interests. *Id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *Id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *Id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988). You state the release of exhibits B and C would give "an unfair competitive advantage to cities all over the United States and world competing with Dallas for convention business and tourism." However, we find that you have failed to demonstrate a specific threat of actual or potential harm to the bureau's interests in a particular competitive situation. Accordingly, the bureau may not withhold exhibits B or C under section 552.104.

You also assert that section 552.110 excepts exhibits B, C, and D from release. Section 552.110 provides as follows:

- (a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.
- (b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.

Section 552.110 protects the competitive interests of the person or entity from whom the information was obtained. Therefore, section 552.110 only protects the interests of third parties, not the interests of a governmental body. Because the submitted information was not submitted by third parties, but rather was compiled by the bureau itself, we conclude that section 552.110 does not apply to the responsive information. Accordingly, you may not withhold exhibits B, C, or D pursuant to section 552.110.

We now consider whether exhibits B, C, D, and E are excepted from release under section 552.131 of the Government Code. Section 552.131 excepts from public disclosure a business prospect's trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the governmental body's territory. Gov't Code § 552.131(a). Section 552.131(a) is inapplicable to information about a financial or other incentive offered the business prospect after a governmental body reaches an agreement with the business prospect. Gov't Code § 552.131(b),(c). Section 552.131 only protects the proprietary information of a third party, not a governmental body. Because you have not demonstrated that the submitted information is protected trade secret information or commercial or financial information of a business prospect, we conclude that section 552.131 does not apply to the responsive information. Accordingly, you may not withhold exhibits B, C, D, or E pursuant to section 552.131.

We now consider your assertion that the information that you have highlighted in exhibit E is excepted from release under 503 of the Texas Rules of Evidence. 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 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You claim that the attorney-client privilege applies to the submitted attorney fee bills. We find that in four cases, you have established that the information contained in the bills reveals a communication between an attorney for the bureau and the bureau, identified the parties to the communication, and shown that the communication was not intended to be disclosed to third parties and that it was made in furtherance of the rendition of professional legal services to the client. Therefore, we have marked this information on the attorney fee bills, which the bureau may withhold under rule 503. However, with regard to the remaining information, in some cases, you have failed to identify the parties to the communication, in other cases, the information you wish to withhold does not constitute a communication for purposes of rule 503, and in still another case, the communication you wish to withhold was

clearly not made between privileged parties. *See* Open Records Decision No. 676 at 7-8 (2002) (privilege applies only to information that is communicated between privileged parties and government body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made). Accordingly, you may not withhold the remaining information that you have highlighted pursuant to rule 503.

You also argue that section 552.136 applies to some of the information in exhibit B. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. The bureau must therefore withhold the credit card numbers contained in exhibit B, which we have marked, pursuant to section 552.136.

In summary, you may withhold the information in that we have marked in exhibit E pursuant to 503 of the Texas Rules of Evidence. You must withhold the credit card numbers that we have marked in exhibit B pursuant to section 552.136 of the Government Code. You must release the remaining information.

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,

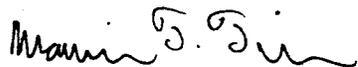
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Maverick F. Fisher  
Assistant Attorney General  
Open Records Division

MFF/seg

Ref: ID# 176736

Enc: Submitted documents

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