

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2003

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
1500 Marilla Street  
Dallas, Texas 75201

OR2003-9029

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192694.

The City of Dallas (the "city") received two requests from the same requestor for information relating to the City Auditor's analysis of the city's contract with Southwestern Bell Telephone, L.P. ("SBC"). In particular, the requestor seeks "any source documents that [the city] used to evaluate the contract and any documents that explain [the city's] assessment of the contract." You state that some responsive information will be released to the requestor. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You also claim that release of a portion of the requested information may implicate the proprietary interests of third parties under section 552.110 of the Government Code, although you take no position as to whether any of the information is so excepted. Accordingly, you state, and provide documentation showing, that you notified third parties SBC, Verizon Select Services, Inc. ("Verizon"), and Cisco Systems, Inc. ("Cisco") of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under

Public Information Act in certain circumstances). We have considered all of the submitted comments and reviewed the submitted representative sample of information.<sup>1</sup>

We begin by addressing your arguments for the information submitted as Exhibit E. You advise that Exhibit E consists of logical and physical network diagrams and layouts for the city's internal network infrastructure. With reference to Open Records Decision No. 581 (1990), you contend that the information in Exhibit E has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property. We understand you to assert that, like the source code, program documentation, and programming standards information at issue in Open Records Decision No. 581, the information in Exhibit E is not the type of information considered "public information" subject to required disclosure under the Public Information Act (the "Act").<sup>2</sup> We find, however, that you have not demonstrated, nor does the information reflect, that the information in Exhibit E exists solely as a tool used to maintain, manipulate, or protect information. We therefore determine that the rationale in Open Records Decision No. 581 does not apply in this instance, and, accordingly, we find that the information in Exhibit E is public information subject to the Act.

You further argue, however, that the information in Exhibit E relates to the security of the city's computer network. Section 552.139 of the Government Code provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment

---

<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.

<sup>2</sup> See Gov't Code §§ 552.002 (defining public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the 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"), 552.021 (Act is only applicable to public information).

of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Based on your representations and our review of the information, we find that portions of the information in Exhibit E constitutes information relating to computer network security and the design of a computer network for purposes of section 552.139(a). Accordingly, we have marked the information in Exhibit E that the city must withhold pursuant to section 552.139(a) of the Government Code.

We next address the information submitted as Exhibit D. As noted above, you indicate that release of the information in Exhibit D may implicate the proprietary interests of third party telecommunications companies that responded to the city's request for proposals. We note that 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) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Cisco has not submitted any comments to this office explaining how release of the requested information would affect its proprietary interests. Therefore, Cisco has provided us with no basis to conclude that it has protected proprietary interests in any of the submitted information. *See* Gov't Code § 551.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

SBC and Verizon have submitted comments in which the companies argue that portions of the requested information are excepted from disclosure under section 552.110 of the Government Code.<sup>3</sup> Section 552.110 of the Government Code protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). Section 552.110(a) protects the property interests of private parties by excepting from disclosure trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *See* Gov't Code § 552.110(a). A "trade secret"

---

<sup>3</sup>We note that Verizon seeks to withhold specific information from its response to the city's request for proposals which the city has not submitted to this office for our review. We do not reach the arguments submitted by Verizon pertaining to information from Verizon's proposal that has not been submitted for our review by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body seeking attorney general's opinion under the Act must submit a copy or representative samples of the specific information requested). With respect to the information the city has submitted for our review, we will address Verizon's claim under section 552.110.

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing this information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). This office must accept a claim that information subject to the Act is exempted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990).

However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial 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[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov’t Code § 552.110(b); *see also National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Upon review of the companies’ arguments and the submitted information, we find that Verizon and SBC have established by specific factual evidence that release of portions of the information in Exhibit D would result in substantial competitive harm to the companies. Thus, we have marked the information in Exhibit D that the city must withhold pursuant to section 552.110(b) of the Government Code. With respect to the remaining information in Exhibit D, however, we find that Verizon and SBC have not established that the information is protected as trade secrets. Furthermore, Verizon and SBC have not provided specific factual evidence demonstrating that release of the remaining information would result in substantial competitive harm. Accordingly, we determine that the remainder of the information in Exhibit D is not excepted from disclosure under section 552.110 of the Government Code. *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative).

We now turn to the city’s claimed exceptions for the remainder of the submitted information. We note that the remaining documents include information that is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

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

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(1), (3), (5). The remaining submitted information includes a completed report, executed contracts and invoices relating to the expenditure of public funds, and materials relating to an estimate of the need for or expenditure of public funds.<sup>4</sup> As prescribed by section 552.022, such information must be released unless it is confidential under other law. Sections 552.103, 552.107, and 552.111 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and are therefore not other law that makes information expressly confidential for purposes of section 552.022(a). See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). We have marked a sample of the information that is subject to disclosure under section 552.022. The city may not withhold the section 552.022 information in the submitted documents pursuant to sections 552.103, 552.107, and 552.111 of the Government Code.

We note, however, that the section 552.022(a)(3) information in the submitted documents contains some information that is subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

---

<sup>4</sup>We find that the document in the folder entitled "Amdahl Study" contained in one of the CD-R discs in Exhibit G consists of a completed report made for a governmental body that is subject to disclosure pursuant to section 552.022(a)(1).

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

We have marked a sample of the account number information that the city must withhold from the submitted section 552.022(a)(3) information pursuant to section 552.136 of the Government Code.

As you contend that the information submitted as Exhibit F and Exhibit G is excepted from disclosure under section 552.103 of the Government Code, we will address your claim under this exception with respect to the information that is not subject to section 552.022. Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>5</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You advise that the city is in negotiations with SBC concerning the city's contract with the company for telecommunications infrastructure equipment and services. You indicate, and the submitted documents reflect, that the city disputes SBC's performance of the contract, as well as the company's billing for services provided pursuant to the contract. You further indicate that the city intends to take legal action to assert its claims under the contract against SBC "if the City and SBC are unable to amicably resolve their differences." Based on your representations and our review of the information, we find that the city has established that litigation was reasonably anticipated on the date the city received the present request, and that the information at issue is related to the anticipated litigation. Accordingly, we agree that the information in Exhibit F, and the information on the four CD-R discs contained in Exhibit G, is generally excepted from disclosure under section 552.103 of the Government Code.

We note, however, that once information has been obtained by all parties to litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).<sup>6</sup> Thus, information that has either been obtained from or provided to all opposing parties in the anticipated litigation is generally not excepted from disclosure under section 552.103(a) and must be disclosed. In this case, it is clear that some of the documents in Exhibit F and on the four CD-R discs in Exhibit G have been seen or obtained by SBC, or were provided to the city by SBC. This information, a sample of which we have marked in the documents, is not excepted from disclosure under section 552.103 and may not be withheld on that basis.

---

<sup>5</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

<sup>6</sup>We also note that the applicability of section 552.103 ends when the anticipated litigation has concluded, or is no longer anticipated. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We next address your claim that the information in Exhibit G is protected by the attorney-client privilege. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. We note that Exhibit G contains some information that is subject to section 552.022 of the Government Code. As noted above, this information may not be withheld under section 552.107. 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.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). As the attorney-client privilege is also encompassed by Rule 503 of the Texas Rules of Evidence, we will address your attorney-client privilege claim pursuant to Rule 503 for the information in Exhibit G that is subject to section 552.022.

When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Because government attorneys often act in capacities other than that of professional legal counsel, including as administrators, investigators, or managers, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Finally, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “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).

Whether a communication meets the definition of a confidential communication depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) and Rule 503 generally except an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

In this case, we find you have not established that the information on the four CD-R discs in Exhibit G consists of a confidential attorney-client communication. Consequently, we determine that the information on the four CD-R discs in Exhibit G that is not excepted under section 552.103 of the Government Code, that is, the information on the discs that is subject to section 552.022 or that has been seen or obtained by SBC, may not be withheld under section 552.107 or Rule 503. With respect to the remaining information in Exhibit G, you state, and the documents reflect, that the documents consist of confidential communications between city staff and city attorneys made for the purpose of facilitating the rendition of professional legal services to the city. You advise that this information was intended to be confidential, and you indicate that the confidentiality of the information has been maintained. We therefore determine that the city may withhold the remaining information in Exhibit G as information protected by the attorney-client privilege pursuant to section 552.107 and Rule 503 of the Texas Rules of Evidence.

We now turn to your arguments for the information submitted as Exhibit H. You contend that the information in Exhibit H is excepted from disclosure under section 552.111 of the Government Code as attorney work product. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This section also encompasses the attorney work product privilege. See *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). A portion of the information in Exhibit H, a sample of which we have marked, is subject to section 552.022 of the Government Code, and not be withheld under section 552.111. However, the attorney work product privilege is also encompassed in Rule 192.5 of the Texas Rules of Civil Procedure. See *In re City of Georgetown*, 53 S.W.3d 328. Thus, we will determine whether the information in Exhibit H that is subject to section 552.022 is protected by Rule 192.5. See Open Records Decision No. 677 at 9 (2002).

An attorney's core work product is confidential under Rule 192.5. Core work product is defined as the work product of an attorney or an attorney's representative developed in anticipation of litigation or for trial that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories. Tex. R. Civ. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under Rule 192.5, a governmental body must demonstrate that the material was 1) created for trial or in anticipation of litigation and 2) consists of an attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories. *Id.*

The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the

investigation for the purpose of preparing for such litigation. See *National Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204. The second prong of the work product test requires the governmental body to show that the documents at issue contain the attorney’s or the attorney’s representative’s mental impressions, opinions, conclusions, or legal theories. Tex. R. Civ. P. 192.5(b)(1).

Furthermore, if a requestor seeks a governmental body’s entire litigation file and the governmental body seeks to withhold the entire file, the governmental body may assert that the file is excepted from disclosure in its entirety because such a request implicates the core work product aspect of the privilege. See Open Records Decision No. 677 at 5-6 (2002). Thus, in such a situation, if the governmental body demonstrates that the file was created in anticipation of litigation, this office will presume that the entire file is within the scope of the privilege. Open Records Decision No. 647 at 5 (1996) (citing *Nat’l Union Fire Ins. Co. v Valdez*, 863 S.W.2d 458, 461 (Tex. 1993)) (organization of attorney’s litigation file necessarily reflects attorney’s thought processes); see also *Curry v. Walker*, 873 S.W.2d 379, 380 (Tex. 1994) (holding that “the decision as to what to include in [the file] necessarily reveals the attorney’s thought processes concerning the prosecution or defense of the case.”)

You indicate that the information in Exhibit H represents the entire file of the city attorneys preparing for anticipated litigation with SBC. Based on your representations and our review, and in accordance with our finding under section 552.103 as discussed above, we find the city has shown that the file represented by the information in Exhibit H was created in anticipation of litigation and reveals the city attorneys’ thought processes regarding the case. It does not appear that the section 552.022 information in Exhibit H falls within the purview of the exceptions to the privilege enumerated in Rule 192.5(c). See *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ). Thus, having met both prongs of Rule 192.5, the city may withhold the section 552.022 information in Exhibit H as attorney work product under the privilege as encompassed by Rule 192.5. With respect to the remaining information in Exhibit H that is not subject to section 552.022, we determine that the city may withhold the information pursuant to section 552.111 of the Government Code.

In summary, we have marked the information in Exhibit E that the city must withhold pursuant to section 552.139(a) of the Government Code. We have marked the information in the submitted documents that the city must withhold pursuant to section 552.110 of the Government Code. We have marked a sample of the account number information that must be withheld from the submitted section 552.022 information under section 552.136 of the Government Code. With the exception of information that is subject to section 552.022 of the Government Code, and information that has been seen or obtained by SBC, a sample of which we have marked, we determine that the city may withhold the information in Exhibit F and the information on the four CD-R discs in Exhibit G pursuant to section 552.103 of

the Government Code. With the exception of the information on the four CD-R discs that is subject to section 552.022 of the Government Code or has been seen or obtained by SBC, we determine that the city may withhold the information in Exhibit G under the attorney-client privilege pursuant to section 552.107 of the Government Code and Rule 503 of the Texas Rules of Evidence. The city may withhold the information in Exhibit H as attorney work product pursuant to section 552.111 of the Government Code and Rule 192.5 of the Texas Rules of Civil Procedure. We conclude that the remaining submitted information must be released 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 Dep't of Pub. 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 192694

Enc: Submitted documents

c: Ms. Colleen McCain Nelson  
Dallas Morning News  
1500 Marilla, 6 E/S  
Dallas, Texas 75201  
(w/o enclosures)

Mr. James E. Cousar  
Thompson & Knight, L.L.P.  
98 San Jacinto Boulevard, Suite 1200  
Austin, Texas 78701-4081  
(w/o enclosures)

Mr. Anthony P. Gillman  
General Counsel  
Verizon Select Services, Inc.  
P.O. Box 110  
Tampa, Florida 33601-0110  
(w/o enclosures)

Mr. Walter O. Theiss  
SBC Communications, Inc.  
208 South Akard  
Dallas, Texas 75202  
(w/o enclosures)

CAUSE NO. GV304799

CITY OF DALLAS, TEXAS,  
Plaintiff,

V.

GREG ABBOTT, ATTORNEY GENERAL,  
OF TEXAS,  
Defendant.

§ IN THE DISTRICT COURT OF  
§  
§  
§ TRAVIS COUNTY, TEXAS  
§  
§  
§ 201<sup>ST</sup> JUDICIAL DISTRICT

**FILED**

05 JAN 26 PM 2:18

*Marian Rodriguez*  
DISTRICT CLERK  
TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

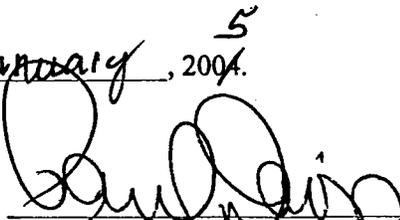
On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff City of Dallas, Texas and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

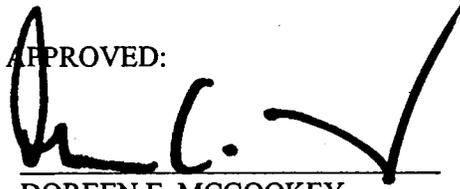
1. The information at issue, Exhibit E to the City's submission to the Attorney Generally, specifically, logical and physical network diagrams and layouts relating to the security of the City's computer network is excepted from disclosure by Tex. Gov't Code § 552.139.
2. The City may withhold Exhibit E from public disclosure.
3. This Agreed Final Judgment prevails over Attorney General Letter Ruling 2003-9029 to the extent of any conflict on the availability of Exhibit E.
4. All costs of court are taxed against the parties incurring the same;
5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 26<sup>th</sup> day of January, 2004<sup>5</sup>.

  
PRESIDING JUDGE

APPROVED:



DOREEN E. MCGOOKEY  
Assistant City Attorney  
Office of the City Attorney  
City Hall  
1500 Marilla Street, 7BN  
Dallas, Texas 75201  
Telephone: (214) 670-3519  
Fax: (214) 670-3515  
State Bar No. 13637600  
ATTORNEY FOR PLAINTIFF



BRENDA LOUDERMILK  
Chief, Open Records Litigation Section  
Administrative Law Division  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: 475-4292  
Fax: 320-0167  
State Bar No. 12585600  
ATTORNEY FOR DEFENDANT