



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2006

Mr. Hal C. Hawes  
Assistant County Attorney  
Williamson County Attorney's Office  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

OR2006-11222

Dear Mr. Hawes:

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# 260459.

The Williamson County Judge, John C. Doerfler, (the "judge") received a request for information related to the Williamson County Landfill. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code, rule 503 of the Texas Rules of Evidence, and rule 192.5 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information includes a completed report that is subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

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[.]

Gov't Code § 552.022(a)(1). Thus, the submitted information must be released unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> You claim that this information is excepted from disclosure by sections 552.107 and 552.111 of the Government Code. However, sections 552.107 and 552.111 are discretionary exceptions to public disclosure that protect the governmental body's interests and are therefore not other law that makes information expressly confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 676 at 10-11 (2002) (governmental body may waive attorney-client privilege under section 552.107), 473 (1987) (governmental body may waive predecessor to section 552.111); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the submitted information may not be withheld under section 552.107 or under section 552.111 of the Government Code. You also assert that the submitted information is excepted from disclosure as attorney work product under rule 192.5 or attorney-client communications under rule 503. The Texas Supreme Court has held that the Texas Rules of Civil Procedure and Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022 of the Government Code. *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Therefore, we will consider whether the judge may withhold the submitted information under rule 503 or rule 192.5.

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.

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<sup>1</sup>The judge does not raise section 552.108 as an exception to disclosure.

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. *Id.* 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1993, no writ).

In this instance, you state that the submitted information was created by an expert hired by the county to assist the county attorney in a legal matter regarding the county. The submitted information constitutes a confidential communication between privileged parties. Having considered your representations and reviewed the information at issue, we find that you have established that the submitted records constitute privileged attorney-client communications. Therefore, the judge may withhold the submitted information pursuant to rule 503. As our ruling is dispositive, we do not address your remaining claim.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Michael A. Lehmann  
Assistant Attorney General  
Open Records Division

MAL/dh

Ref: ID# 260459

Enc. Submitted documents

c: Ms. Sheila Fox  
2400 Rock Terrace Circle  
Austin, Texas 78704  
(w/o enclosures)