



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2006

Mr. Dick H. Gregg, III
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2006-11877

Dear Mr. Gregg:

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# 265348.

The Brazoria County Conservation and Reclamation District Number Three (the "district"), which you represent, received a request for copy of a specified investigation and the addresses and phone numbers of all district employees. You claim that the requested information is excepted from disclosure under sections 552.102, 552.107, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

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). The submitted information includes a completed investigation made for the district. A completed investigation under section 552.022 must be released

unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. You claim that the information at issue is excepted from disclosure under section 552.107 of the Government Code. However, section 552.107 is a discretionary exception to disclosure that protects a governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). See Open Records Decision No. 676 (2002) (governmental body may waive section 552.107); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, the Texas Supreme Court has held that the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. See *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is also found at rule 503 of the Texas Rules of Evidence. Therefore, we will address your arguments under rule 503.

Rule 503 of the Texas Rules of Evidence 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. *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 state that the completed investigation constitutes a communication between the district's outside counsel and a representative of the district's outside counsel that was made for the purpose of rendering legal services to the district. You state that this communication was intended to be confidential, and that confidentiality has been maintained. Based on your representations and our review of the information at issue, we agree that the completed investigation is protected by the attorney-client privilege. We therefore conclude the district may withhold this information pursuant to rule 503 of the Texas Rules of Evidence.

You claim that portions of the remaining information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note that post office boxes are not home addresses and are not protected under section 552.117. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). We also note that pursuant to section 552.023 of the Government Code, the requestor has a special right of access to his own 552.117 information, and it may not be withheld from him on this basis. *See* Gov't Code § 552.023 (person has special right of access to information held by governmental body that relates to person and is protected from disclosure by laws intended to protect that person's privacy interests).

You state that the employees whose information is at issue made the request for confidentiality under section 552.024. To the extent the employees elected confidentiality under prior to the receipt of the present request, the district must withhold the information we have pursuant to section 552.117(a)(1) of the Government Code.

Finally, we address your claim under section 552.102 of the Government Code. Section 552.102(a) excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). This exception applies when the release of information would result in a violation of the common-law right to privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The common-law right to privacy is violated if the information (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to

a reasonable person and (2) is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). After review of your arguments and the submitted information, we find that none of the remaining information may be withheld under section 552.102(a).

In summary, the district may withhold the completed investigation under rule 503 of the Texas Rules of Evidence. To the extent the employees at issue elected confidentiality under section 552.024 of the Government Code prior to the district's receipt of the present request, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code. The remaining 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, 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/vh

Ref: ID# 265348

Enc. Submitted documents

c: Mr. Robert Hinchman
428 East Locust Street
Angleton, Texas 77515
(w/o enclosures)