



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

Mr. George E. Hyde
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-10080

Dear Mr. Hyde:

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# 349583.

The City of Windcrest (the "city"), which you represent, received a request for "to whom the money was given and the amounts" in relation to special legal fees from the city's financial statement of February 28, 2009. You claim that portions of the submitted information are excepted from disclosure under sections 552.103 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor is seeking only "to whom the money was given and the amounts" in relation to the specified special legal fees. Accordingly, only whom the city paid and the amounts are responsive to the instant request. Thus, the submitted fee bills are not responsive to this request. This ruling does not address the public availability of nonresponsive information, which we have marked, and the city is not required to release nonresponsive information in response to this request. Accordingly, we will only address your arguments with regard to the responsive information.

¹We note that in your brief dated May 21, 2009, you have withdrawn your remaining assertions under the Act.

Next, we note that the responsive information is subject to section 552.022 of the Government Code. This section provides in part 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:

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

Gov't Code § 552.022(a)(3). In this instance, the responsive information consists of information in an account, voucher, or contract relating to the expenditure of public funds. Thus, the city must release these documents unless they are expressly confidential under other law. You raise sections 552.103 and 552.107 of the Government Code for this information. However, sections 552.103 and 552.107 are discretionary exceptions under the Act and do not constitute "other law" for purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the city may not withhold the responsive information under section 552.103 or section 552.107. However, The Texas Supreme Court has held that the 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). Therefore, we will determine whether the city may withhold any of the information at issue under Texas Rule of Evidence 503.

Texas Rule of Evidence 503 addresses the attorney-client privilege. 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(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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state the submitted information documents communications between the city's attorneys and their clients that were made for the purpose of consultation and legal advice. You indicate that the communications were intended to be and have remained confidential. However, we find that you have failed to demonstrate that the responsive information documents confidential communications that were made between privileged parties in furtherance of the rendition of professional legal services to the client. Therefore, we conclude that Texas Rule of Evidence 503 is not applicable to the responsive information and none of this information may be withheld on this basis. As no other exceptions against disclosure have been raised, the city must release the responsive information to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Paige Savoie".

Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 349583

Enc. Submitted documents

cc: Requestor
(w/o enclosures)