



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2009

Mr. Robert D. Andron
General Counsel
El Paso Water Utilities Public Service Board
P.O. Box 511
El Paso, Texas 79961-0001

OR2009-11323

Dear Mr. Andron:

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# 353139.

The El Paso Water Utilities Public Service Board (the "board") received a request for all invoices submitted by a specific law firm to the board from October 1, 2006 to the date of the request, excluding the invoices related to a pending federal court case. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

The requestor contends in his comments that the board has no separate legal existence because it is merely a department of the City of El Paso (the "city"). The requestor informs us that he also requested the law firm's invoices to the city, and the city provided that

¹ 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.

information. Therefore, according to the requestor, the board is bound by the city's release of information to the requestor and has waived any exceptions to disclosure. We note the Act prohibits selective disclosure of information that a governmental body has voluntarily made available. Gov't Code § 552.007(b). As a general rule, therefore, if a governmental body releases information to any member of the public, the Act's exceptions to disclosure are waived unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision Nos. 490 (1988), 400 (1983). In this instance, however, we note that for purposes of the Act, the board and the city are separate governmental bodies. Furthermore, the board maintains its own information responsive to this request, which has not previously been released. Accordingly, we will address the board's arguments against disclosure of the requested information.

You state that the responsive information consists of "approximately two reams of paper with a great deal of redaction based on the narrative billing method of the attorneys[.]" You assert that redacting privileged information from these documents in order to comply with the request "would take significant staff time and require several weeks to accomplish." However, a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indust. Found. v. Tex. Indust. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). *Id.*, Open Records Decision No. 497 (1988). Therefore, the board may not decline to comply with the requirements of the Act on the basis of administrative convenience.

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

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....
(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

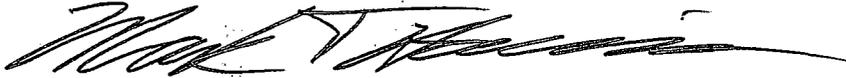
Gov't Code § 552.022(a)(16). In this instance, the requested information consists of attorney fee bills. Therefore, the board must release the information at issue pursuant to section 552.022(a)(16) unless it is expressly confidential under other law. You claim the submitted attorney fee bills are excepted from disclosure under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception under the Act that protects a governmental body's interests and may be waived. *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 No. 665 at 2 n.5 (2000) (discretionary exceptions generally); Gov't Code § 552.007. As such, section 552.103 does not constitute "other law" that makes information confidential for purposes of section 552.022(a)(16). Therefore, the board may not withhold the information at issue under section 552.103. As you raise no other arguments against disclosure, the information at issue must be released.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 353139

Enc. Submitted documents

c: Requestor
(w/o enclosures)