



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2011

Ms. Jenny Gravley
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2011-07709

Dear Mr. Gravley:

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# 419374.

The town of DISH (the "town"), which you represent, received a request for a specified contract for legal services.¹ You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged pursuant to Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information. We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We first address the representative of the requestor's assertion that the town failed to comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. *See id.* § 552.301(a)-(b). Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(a), (b). The requestor's representative asserts that, although the town submitted its request for a ruling within the ten-business day deadline and

¹We note that the town asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

discussed Texas Rule of Evidence 503 and the attorney-client privilege in that request, the town did not technically raise rule 503 but only section 552.107 of the Government Code. However, upon review of the requestor's representative's arguments and the request for a ruling, we find the town made a timely assertion of the attorney-client privilege under both section 552.107 and rule 503. Accordingly, we conclude the town complied with section 552.301 of the Government Code in requesting this decision, and we will address the town's arguments against disclosure.

As you acknowledge, the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent 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:

...

(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). The submitted information consists of a contract related to the expenditure of public funds that is subject to section 552.022(a)(3). Therefore, the submitted information must be released under section 552.022 unless it is confidential under other law. *See id.* You seek to withhold this information under sections 552.103 and 552.107 of the Government Code. However, sections 552.103 and 552.107 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *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). As such, sections 552.103 and 552.107 are not other laws that make information expressly confidential for the purposes of section 552.022(a)(3). Therefore, the town may not withhold the submitted information under sections 552.103 or 552.107 of the Government Code. The Texas Supreme Court has held, however, 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). You assert the submitted information is privileged pursuant Texas Rule of Evidence 503. Accordingly, we will determine whether the town may withhold the submitted information under rule 503.

Texas Rule of Evidence 503 enacts 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 it was not intended to be disclosed to third persons and 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 contract consists of a confidential communication between the town and its attorney that was made for the purpose of rendering professional legal advice to the town. You also state the confidentiality of the communication has been maintained. Based on these representations and our review of the information at issue, we agree this information

consists of a privileged attorney-client communication. Accordingly, the town may withhold the submitted information under rule 503 of the Texas Rules of Evidence.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 419374

Enc. Submitted documents

c: Requestor
(w/o enclosures)