



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2013

Ms. Susan Guinn
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2013-20080

Dear Ms. Guinn:

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# 507330 (COSA File No. W018519-091113).

The City of San Antonio (the "city") received a request for a specified studies. You claim the requested information is excepted from disclosure under sections 552.107, 552.111, and 552.153 of the Government Code, and privileged under rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information consists of completed reports that are subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

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 unless made confidential under this chapter or 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). You assert this information is excepted from release under sections 552.107(1), 552.111, and 552.153(b)(1) of the Government Code. Sections 552.107, 552.111, and 552.153(b)(1) are discretionary and do not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally), Gov't Code § 552.153(b)(1) (providing for withholding of certain information relating to proposal for qualifying project under chapter 2267 of the Government Code if release would harm governmental body's financial interests or bargaining position, (2)(c) (providing for withholding of certain information provided by contracting party under chapter 2267 if release before execution of interim or comprehensive agreement would harm governmental body's financial interests or bargaining position). Therefore, the city may not withhold the submitted information, which is subject to section 552.022(a)(1), under section 552.107, 552.111, or 552.153(b)(1). Further, the Texas Disciplinary Rules of Professional Conduct are not considered "other law" for purposes of section 552.022. Therefore, we do not address your argument under rule 1.05, and the city may not withhold any of the submitted information on this basis. *See* ORD 676 at 3-4. However, the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your assertions of the attorney-client privilege under Texas Rule of Evidence 503 and the attorney work product privilege under Texas Rule of Civil Procedure 192.5 for the submitted information.

Texas Rule of Evidence 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 it is 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 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 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, orig. proceeding).

You assert the submitted reports were created by an individual and group hired by, and acting under the supervision of, city attorneys. You state the reports were prepared for the purpose of facilitating the rendition of legal services to the city. You further state the reports were communicated to the city and its attorneys. You state the communications have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the city has established the submitted information constitutes attorney-client communications under rule 503. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (attorney’s entire investigative report protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice). Thus, the city may withhold the submitted information pursuant to rule 503 of the Texas Rules of Evidence.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Strain', written in a cursive style.

Tamara R. Strain
Assistant Attorney General
Open Records Division

TRS/bhf

Ref: ID# 507330

Enc. Submitted documents

c: Requestor
(w/o enclosures)