



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 21, 2014

Mr. Jeffrey W. Giles  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2014-03287

Dear Mr. Giles:

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# 514791 (Houston GC No. 21006).

The City of Houston (the "city") received a request for all documents submitted to the city's Office of the Inspector General (the "OIG") for a specified complaint case, including documents submitted by witnesses to the specified complaint, but excluding any documents submitted to the OIG by the requestor. You claim the submitted information is privileged under Texas Rule of Evidence 503. We have considered your argument and reviewed the submitted information.

Initially, we note some of the information you have submitted consists of information created by the OIG or information submitted to the OIG by the requestor. This information, which we have marked, is not responsive to the request, which seeks only information submitted to the OIG and specifically excludes information submitted to the OIG by the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

Next, you acknowledge, and we agree, the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). Because the responsive information is subject to section 552.022(a)(1), it must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. The Texas Supreme Court has held the Texas Rules of Evidence 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 address your assertion of the attorney-client privilege under Texas Rule of Evidence 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).

When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). 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. *Id.* Upon a demonstration of all three factors, the entire communication is 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). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston

[14th Dist.] 1998, orig. proceeding) (privilege extends to entire communication, including factual information).

You inform us the information submitted as Exhibit 2 was communicated between OIG employees in their capacities as attorney representatives and city employees in their capacities as clients and client representatives. You explain the OIG is a division of the city attorney's office and acts under the city attorney's supervision. You state the information at issue was communicated for the purpose of facilitating the rendition of professional legal services to the city and you state the information has remained confidential. Based upon these representations and our review, we find you have established the responsive information consists of a privileged attorney-client communication the city may withhold under rule 503. *Cf. 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).

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

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 514791

Enc. Submitted documents

c: Requestor  
(w/o enclosures)