



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2014

Mr. Gary B. Lawson  
Strasburger & Price, LLP  
901 Main Street, Suite 4400  
Dallas, Texas 75202-3794

OR2014-04173

Dear Mr. Lawson:

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# 518367.

The Dallas Police and Fire Pension System (the "system"), which you represent, received a request for invoice number 677025 for attorney's fees. The system claims the requested information is excepted from disclosure under sections 552.103, 552.104, and 552.143 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, the submitted information consists of an attorney fee bill that is subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides 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:

...

(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). You assert this information is excepted from release under section 552.103 of the Government Code. However, section 552.103 is discretionary and does not make information confidential under the Act. *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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the system may not withhold the submitted information under section 552.103. However, section 552.143 of the Government Code makes information confidential under the Act and information that is subject to section 552.022 may also be withheld under section 552.104. *See* Gov't Code § 552.104(b) (information protected by section 552.104 not subject to required public disclosure under section 552.022(a)). In addition, the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rule 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). Thus, we will address your claims under sections 552.104 and 552.143 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5.

You assert the submitted information is confidential under section 552.143(c) of the Government Code, which provides as follows:

All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143(c). You argue the submitted information pertains to the system's direct purchase, holding, or disposal of a restricted security. *See id.* § 552.143(d)(3) (defining "restricted securities" for purposes of section 552.143); *see also* 17 C.F.R. § 230.144(a)(3) (defining "restricted securities" as "securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving public offering"). Upon review, we find you have failed to demonstrate how any of the submitted information, which pertains to a private law firm providing legal services to the system, is information regarding the system's direct purchase, holding, or disposal of

a restricted security. Accordingly, the system may not withhold any of the submitted information under section 552.143(c).

Rule 503(b)(1) of the Texas Rule of Evidence provides the following:

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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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. *See* ORD 676. 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 communication 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 attaches to complete communication, including factual information).

You assert the information you have marked under Rule 503 consists of privileged communications between attorneys for the system, employees or officials of the system, and a consultant of the system. You state the communications were made in order to facilitate the rendition of legal services to the system. You also assert the communications were intended to be confidential and their confidentiality has been maintained. Having considered your representations and reviewed the information at issue, we find you have established this information constitutes privileged attorney-client communications. Therefore, the system may withhold the information you have marked under Texas Rule of Evidence 503.<sup>1</sup>

You assert some of the remaining information is excepted from disclosure under section 552.104 of the Government Code, which excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104(a). This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 593 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You inform us the system has a specific marketplace interest with respect to the information at issue. You explain the system owns Museum Tower, which itself owns and sells condominiums. Upon review, we agree the system has demonstrated a specific marketplace interest and may be a competitor in the marketplace for purposes of section 552.104 of the Government Code.

You assert release the information at issue would provide a competitive advantage to prospective purchasers of Museum Tower condominiums because it would undermine "the confidentiality of the terms and conditions involving past sales agreements and the parties involved in making those agreements." However, we find the system has failed to establish release of the remaining information at issue would cause specific harm to the system's marketplace interests. Accordingly, the system may not withhold the remaining information you have marked under section 552.104 of the Government Code.

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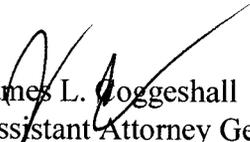
<sup>1</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

To conclude, the system may withhold the information you have marked under Texas Rule of Evidence 503. The system must release the remaining information.

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,



James L. Goggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 518367

Enc. Submitted documents

c: Requestor  
(w/o enclosures)