



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2014

Ms. Kathlyn Wilson
Director
Office of Agency Counsel
Legal Section
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2014-08552

Dear Ms. Wilson:

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# 523083 (TDI# 148315).

The Texas Department of Insurance (the "department") received a request for records pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503, Texas Rule of Civil Procedure 192.5, and Texas Disciplinary Rule of Professional Conduct 1.05. We have considered your arguments and reviewed the submitted information.

You inform us the submitted information relates to and is contained in a closed investigative enforcement case file. Thus, you acknowledge this information is subject to section 552.022(a)(1) of the Government Code. This section provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Although you assert the information at issue is excepted from disclosure under sections 552.107 and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interest and do not make information confidential. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 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), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Therefore, the department may not withhold the information at issue under section 552.107 or section 552.111. Further, the Texas Disciplinary Rules of Professional Conduct are not considered “other law” for purposes of section 552.022. Consequently, we do not address your argument under rule 1.05 and the department may not withhold any of the submitted information on this basis. *See* ORD 676 at 3-4. However, the Texas Supreme Court has held that the Texas Rules of Civil Procedure and 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, 3636 (Tex. 2001). Accordingly we will consider your assertion 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. Furthermore, as section 552.101 of the Government Code can provide a compelling reason against disclosure, we will address its applicability to the information at issue.

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. ORD 676 at 6-7. 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state the information at issue constitutes communications made between department attorneys and employees. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the department. You further state these communications have remained confidential. Based on your representations and our review, we find the department may withhold the information we have marked under Texas Rule of Evidence 503.¹

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. Section 4001.206 of the Insurance Code states:

(a) On termination of the appointment of an agent for cause, the insurer or agent shall immediately file with the department a statement of the facts relating to the termination of the appointment and the date and cause of the termination. On receipt of the statement, the department shall record the termination of the appointment of that agent to represent the insurer in this state.

(b) A document, record, statement, or other information required to be made or disclosed to the department under this section is a privileged and confidential communication and is not admissible in evidence in a court action or proceeding except under a subpoena issued by a court of record.

(c) A person, including an insurer or an employee or agent of an insurer, who provides without malice information required to be disclosed under this section is not liable for providing the information.

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

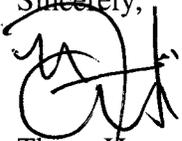
Ins. Code § 4001.206. The information you have marked consists of an appointment cancellation document submitted to the department. Based on your representations and our review, we find the information you have marked is confidential, and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 4001.206 of the Insurance Code.

In summary, the department may withhold the information we have marked under Texas Rule of Evidence 503. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 4001.206 of the Insurance Code. The department must release the remaining information.²

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

Sincerely,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

²We note the information being released contains the requestor's e-mail address, which is excepted from disclosure under section 552.137 of the Government Code, and the requestor's social security number. The requestor has a right of access to his social security number under section 552.023 of the Government Code and to his e-mail address under section 552.137(b) of the Government Code. See Gov't Code §§ 552.023(a), .137(b); Open Records Decision No. 481 at 7 (1987) (privacy theories not implicated when individual requests information concerning himself). We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold an e-mail address of a member of the public under section 552.137 without requesting a decision. Additionally, section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without requesting a decision. Gov't Code § 552.147(b). Thus, should the department receive another request for the submitted information from a different requestor, the department is authorized to withhold the requestor's e-mail address and social security number without requesting another ruling.

Ref: ID# 523083

Enc. Submitted documents

c: Requestor
(w/o enclosures)