



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2014

Ms. Clarissa M. Rodriguez
Counsel for the Alamo Area Council of Governments
Denton, Navarro, Rocha, Bernal, Hyde & Zech
2517 North Main Avenue
San Antonio, Texas 78212-4685

OR2014-09949

Dear Ms. Rodriguez:

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# 525426.

The Alamo Area Council of Governments (the "council"), which you represent, received a request for e-mails between two former council employees and a named individual for a specified time period. You claim the requested information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note portions of the requested information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-08572 (2014). In that ruling, we concluded the council may withhold certain information pursuant to Texas Rule of Evidence 503 and the council may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2014-08572 was based have changed. Accordingly, the council may continue to rely on

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Open Records Letter No. 2014-08572 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or 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 contains executed contracts relating to the receipt or expenditure of council funds that are subject to subsection 552.022(a)(3). These documents must be released unless they are made confidential under the Act or other law. *See id.* You seek to withhold this information under section 552.107 and section 552.108 of the Government Code. However, sections 552.107 and 552.108 are discretionary exceptions to disclosure and do not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, none of the information subject to section 552.022 may be withheld under section 552.107 or section 552.108. However, the Texas Supreme Court has held 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). Accordingly, we will address your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence to the information subject to section 552.022(a)(3). Finally, we will also address your arguments against disclosure for the information not subject to section 552.022.

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 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, no writ).

You assert the information subject to section 552.022(a)(3) of the Government Code should be withheld under rule 503 of the Texas Rules of Evidence. We note the information subject to section 552.022(a)(3) is attached to communications you state are privileged attorney-client communications between the council's attorneys and employees in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the council. You indicate the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your

representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to information subject to section 552.022(a)(3) and the council may withhold this information under rule 503 of the Texas Rules of Evidence.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies to information held by a “law enforcement agency.” However, section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state the remaining information pertains to an active criminal investigation being conducted by the Texas Rangers. You further state the Texas Rangers object to release of the remaining information, as its release would interfere with the detection, investigation, or prosecution of the crime at issue. Based on your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to the remaining information and the council may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers.²

In summary, the council may continue to rely on Open Records Letter No. 2014-08572 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The council may withhold the information subject to section 552.022(a)(3) under Texas Rule of Evidence 503. The council may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers.

²As our ruling on this information is dispositive, we need not address your remaining argument against disclosure.

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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 525426

Enc. Submitted documents

c: Requestor
(w/o enclosures)