



ATTORNEY GENERAL OF TEXAS  
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OR2014-20587

Dear Ms. Saenz:

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# 542746.

The City of Jonestown (the "city"), which you represent, received three requests from the same requestor for twenty-two categories of information relating to the termination of the requestor's employment. The city claims the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted representative sample of information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("commission") identification numbers.<sup>1</sup> In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. ORD 581 at 5. We understand an officer's commission identification number is a unique

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<sup>1</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.*

computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission's website. Accordingly, we find the officers' commission identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification numbers are not subject to the Act and the city is not required to release them to the requestor.<sup>2</sup>

Next, we address the requestor's contention the city did not comply with the procedural requirements of the Act. We understand the requestor to assert he was not timely notified of the city's request for a ruling from this office as required by section 552.301(d) of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. The city states it received the request for information on August 22, 2014. The city informs us it was closed on September 1, 2014. This office does not count the date the request was received or the date the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was September 8, 2014. We note the envelope in which the city sent its request for a ruling was postmarked September 8, 2014. The request for a ruling indicates the requestor was copied on the correspondence. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city complied with the procedural requirements mandated by subsection 552.301(d) of the Government Code. Accordingly, we will address the city's arguments against disclosure of the submitted information.

Next, the requestor alleges the requested information has been released previously. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007; Open Records Decision No. 518 at 3 (1989). However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. Upon review, we have no indication the submitted information has been released in its exact form to any members

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<sup>2</sup>As we are able to make this determination, we do not address your argument against the disclosure of this information.

of the public. Accordingly, we find section 552.007 of the Government Code is inapplicable to the submitted information, and we will address the city's arguments against disclosure of this information.

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. This section encompasses information protected by other statutes, such as section 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides in part that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). We note the city is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to Gov't Code § 552.101). Such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* ORD 495 at 4. The requestor requested all closed session council meetings showing when the requestor was appointed Interim Chief of Police. The city claims the certified agenda of such an executive session is confidential under section 551.104. Based on the city's representation, we conclude the city must withhold the certified agenda at issue under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Next, we note the city states it has submitted a representative sample of information relating to eight categories of requested information. Upon review, we find the submitted information is not representative of the other types of information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information the city has submitted for our review. This ruling does not authorize the city to withhold any information that is substantially different from the type of information the city submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent information responsive to the remaining portions of the requests exists and was maintained by the city on the date it received the request, we assume the city has released it to the requestor. If the city has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, 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, the following:

(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:

(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). The submitted information includes a completed investigation and completed reports that are subject to section 552.022(a)(1). The city must release the completed investigation and the completed reports pursuant to section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although the city raises section 552.107 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 676 at 10-11 (2002) (governmental body may waive attorney-client privilege under section 552.107(1)), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions).* Therefore, the city may not withhold any of the information subject to section 552.022, which we have marked, under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider the city's assertions of the attorney-client privilege under Texas Rule of Evidence 503. Further, we will address the city's arguments against disclosure of the remaining information.

Texas Rule of Evidence 503(b)(1) 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 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).

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* 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 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. *Id.* Upon a demonstration of all three factors, the entire communication 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). *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).

The city states the information subject to section 552.022 of the Government Code consists of communications involving city attorneys, representatives, and other employees and officials. The city states the communications were made for the purpose of facilitating the rendition of professional legal services to the city and these communications have remained confidential. Upon review, we find the city has established the information at issue constitutes attorney-client communications under rule 503. Thus, the city may withhold the information subject to section 552.022 under Texas Rule of Evidence 503.

The city claims section 552.107 of the Government Code for the remaining information in Exhibits B, C, and D. Section 552.107(1) protects information that comes within the attorney-client privilege. *See* Gov’t Code § 552.107(1). The elements of the privilege under section 552.107 are the same as those for rule 503. 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* ORD 676 at 6-7. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege. *See Huie*, 922 S.W.2d at 923.

The city states the information at issue consists of communications involving city attorneys, representatives, and other employees and officials. The city states the communications were made for the purpose of facilitating the rendition of professional legal services to the city and these communications have remained confidential. Upon review, with the exception of the

information we have marked, we find the city has demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, with the exception of the information we have marked, the city may withhold the remaining information in Exhibits B, C, and D under section 552.107(1) of the Government Code. However, the communication we have marked is from an individual the city has not demonstrated is a privileged party. Thus, we find the city has not demonstrated the information at issue reveals privileged attorney-client communications for the purposes of section 552.107(1). Therefore, the city may not withhold the information we have marked under section 552.107(1).

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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). The city states the information in Exhibit E relates to pending criminal investigations. Upon review, 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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the information in Exhibit E under section 552.108(a)(1) of the Government Code.

We note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code, which excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>3</sup> *See* Gov’t Code § 552.137(a)-(c). Upon review, we find the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the city must withhold the certified agenda at issue under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The city

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

may withhold the information subject to section 552.022 under Texas Rule of Evidence 503. With the exception of the information we have marked, the city may withhold the remaining information in Exhibits B, C, and D under section 552.107(1) of the Government Code. With the exception of basic information, the city may withhold the information in Exhibit E under section 552.108(a)(1) of the Government Code. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city 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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 542746

Enc. Submitted documents

c: Requestor  
(w/o enclosures)