



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2015

Mr. John A. Haislet
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2015-08544

Dear Mr. Haislet:

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# 562162.

The City of College Station (the "city") received a request for all information pertaining to a specified business, as well as all information from a specified time period regarding issues pertaining to pest control within the city. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107(1) of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

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 an executed contract that is subject to subsection 552.022(a)(3) and must be released unless it is made confidential under the Act or other law. *See id.* You claim the information subject to section 552.022 is excepted from required public disclosure under section 552.107(1) of the Government Code. However, this section is a discretionary exception to disclosure that does not make information confidential under the Act. *See* Open Records Decision Nos. 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), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the information subject to section 552.022, which we have marked, under section 552.107(1) of the Government Code. The Texas Supreme Court has held, however, that 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 attorney-client privilege claim under Rule 503 of the Texas Rules of Evidence for the information subject to section 552.022. We will also address your argument under section 552.107(1) for the information not subject to section 552.022 of the Government Code.

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

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

- (A) between the client or the client's representative and the client's lawyer or the lawyer's representative;
- (B) between the client's lawyer and the lawyer's representative;
- (C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
- (D) between the client's representatives or between the client and the client's representative; 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 to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, 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. *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 state the information subject to section 552.022 is attached to a confidential communication between a city attorney and a city employee, and the communication was made for the purpose of facilitating the rendition of professional legal services to the city. You further state this communication was intended to be and has remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the communication at issue. We note, however, the information subject to section 552.022 was received from or sent to a non-privileged party. Furthermore, this information is separately responsive to the request. Therefore, to the extent the information subject to section 552.022, which we have marked, exists separate and apart from the otherwise privileged communication to which it is attached, the city may not withhold it under Rule 503 of the Texas Rules of Evidence. If this information does not exist separate and apart from the otherwise privileged communication to which it is attached, the city may withhold it under Rule 503 of the Texas Rules of Evidence.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov’t Code § 552.107(1). The elements of the privilege under section 552.107(1) are the same as those discussed above 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. ORD 676 at 6-7. Section 552.107(1) generally excepts from disclosure an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie*, 922 S.W.2d at 923.

You claim the information not subject to section 552.022 is excepted from disclosure under section 552.107(1) of the Government Code. You state the information at issue consists of communications between city attorneys and city employees, and the communications were made for the purpose of facilitating the rendition of professional legal services to the city. You further state these communications were intended to be and have remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the city may generally withhold the information we have marked under section 552.107(1) of the Government Code. However, we note some of the otherwise privileged e-mail strings we have marked include attached information and e-mails that were sent to or received from a non-privileged party. If this information is removed from the privileged e-mail strings and stands alone, it is responsive to the request for information. Therefore, if this non-privileged information, which we have marked, is maintained by the city separate and apart from the otherwise privileged e-mail strings in which it appears, then the city may not withhold this information under section 552.107(1) of the Government Code.

In summary, to the extent the information subject to section 552.022 of the Government Code, which we have marked, does not exist separate and apart from the otherwise privileged communication to which it is attached, the city may withhold it under Rule 503 of the Texas Rules of Evidence. Conversely, to the extent the information subject to section 552.022 of the Government Code does exist separate and apart from the otherwise privileged communication to which it is attached, the city must release this information.¹ Further, the city may generally withhold the information we have marked under section 552.107(1) of the Government Code; however, the city must release the non-privileged information we have marked if the city maintains it separate and apart from the otherwise privileged e-mail strings in which it appears.

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/>

¹This office has determined an insurance policy number is an access device for purposes section 552.136 of the Government Code. *See* Gov't Code § 552.136(b). In this instance, we note the requestor has a right of access to the insurance policy numbers being released. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or individual she represents).

[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,



Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 562162

Enc. Submitted documents

c: Requestor
(w/o enclosures)