



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 8, 2015

Mr. David T. Ritter  
Counsel for the City of Oak Point  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2015-13851

Dear Mr. Ritter:

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# 570711 (Oak Point PIR-2015-04-031, PIR-2015-04-030).

The City of Oak Point (the "city"), which you represent, received two requests for information pertaining to an investigation of the director of the city's Department of Public Safety. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the submitted information consists of a final investigative report by a special investigator retained by the city attorney. Section 552.022(a)(1) provides for 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 is made confidential under the Act or other law. *See Gov't Code* § 552.022(a)(1). The city must release the submitted information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. Although you seek to withhold this information under section 552.107 of the Government Code, this is a discretionary exception and 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). Thus, the city may not withhold the submitted information under section 552.107 of the Government Code. 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). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted information. The common-law informer’s privilege is also other law for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001); *Tex. Comm’n on Envtl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Further, section 552.137 can make information confidential under the Act. Accordingly, we will consider these arguments for the submitted information.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 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 Open Records Decision No. 676* (2002). 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 inform us the submitted information consists of a report communicated between the city attorney and a special investigator retained by the city attorney. We understand the submitted information was communicated to facilitate the rendition of professional legal services to the city. You assert the communications were intended to be confidential and that confidentiality has been maintained. Having considered your representations and reviewed the information at issue, we find you have established the information at issue is protected by the attorney-client privilege. See *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (attorney's entire investigative report protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice). Accordingly, the city may withhold the submitted information under rule 503 of the Texas Rules of Evidence.<sup>1</sup>

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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 570711

Enc. Submitted documents

c: Requestor  
(w/o enclosures)