



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2015

Ms. Aimee Alcorn
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-22536

Dear Ms. Alcorn:

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# 584654 (City File # 876).

The City of Corpus Christi (the "city") received a request for all correspondence between a named individual and any other person pertaining to a specified issue, including any attachments. You state the city is releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state, and we agree, some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-21932 (2015). In that ruling, we determined, in pertinent part, the city may withhold the information at issue under section 552.103 of the Government Code. There is no indication the law, facts, or circumstances on which the prior ruling was based have

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

changed. Thus, with respect to the information we have marked, the city may continue to rely on Open Records Letter No. 2015-21932 as a previous determination and withhold that information in accordance with that ruling.² See Open Records Decision No. 673 (2001) (so long as law, facts, and 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, the remaining information you have submitted was not at issue in the previous ruling. Accordingly, we will address your argument against disclosure of this information.

Next, we note some of the remaining information is subject to section 552.022 of the Government Code, which provides in pertinent 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; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). The submitted agreement between the city and outside consultant is subject to section 552.022(a)(3) and the submitted court-filed documents are subject to section 552.022(a)(17). This information must be released unless it is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.107 of the Government Code, this section is discretionary and does not make information confidential under the Act. See Open Records Decision Nos. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022 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 the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328,

²As we are able to make this determination, we need not address your argument under section 552.103 of the Government Code.

336 (Tex. 2001). Therefore, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information that is subject to section 552.022. We will address your argument under section 552.107 for the remaining information that is 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 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).

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. Accordingly, 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 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 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 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 explain the information that is subject to section 552.022 consists of attachments to e-mail communications between city attorneys and city staff in their capacity as clients that were made for the purpose of providing legal services to the city. You state the communications were intended to be confidential and have remained confidential. However, if the attachments are removed from the e-mails and stand alone, they are responsive to the request for information. Therefore, if these non-privileged attachments, which we have marked, are maintained by the city separate and apart from the otherwise privileged e-mails to which they are attached, then the city may not withhold the attachments under Texas Rule of Evidence 503. If the attachments subject to section 552.022 we have marked do not exist separate and apart from the e-mails to which they are attached, the city may withhold them under rule 503.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. 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 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 state the remaining information at issue constitutes e-mail communications between city attorneys and city staff in their capacity as clients that were made for the purpose of providing legal services to the city. You state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the city may generally withhold the remaining information that is not subject to section 552.022 under section 552.107(1). We note, however, some of the e-mails at issue include attachments received from a non-privileged party. Furthermore, if the attachments received from the non-privileged party are removed from the e-mails and stand alone, they are responsive to the request for information. Therefore, if these non-privileged attachments, which we have marked, are maintained by the city separate and apart from the otherwise privileged e-mails to which they are attached, then the city may not withhold these non-privileged attachments under section 552.107(1).

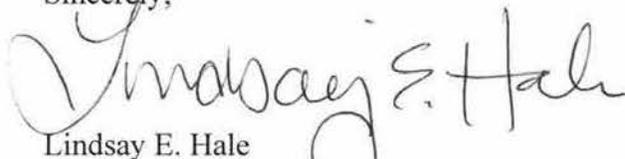
In summary, the city may continue to rely on Open Records Letter No. 2015-21932 as a previous determination and withhold the information we have marked in accordance with that ruling. The city may generally withhold the attachments we have marked that are subject

to section 552.022 of the Government Code under Texas Rule of Evidence 503; however, if these attachments are maintained by the city separate and apart from the otherwise privileged e-mails to which they are attached, the city must release the marked attachments. The city may generally withhold the remaining information under section 552.107(1) of the Government Code; however, if the attachments we have marked are maintained by the city separate and apart from the otherwise privileged e-mails to which they are attached, the city must release the marked attachments.

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 "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/eb

Ref: ID# 584654

Enc. Submitted documents

c: Requestor
(w/o enclosures)