



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Ms. Tiffany Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2016-01673

Dear Ms. Evans:

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# 594957 (GC No. 22762).

The City of Houston (the "city") received a request for (1) complaints investigated under specified executive orders during a specified time period and (2) statistical information on complaints filed since a specified time. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered your claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the city has not submitted any information pertinent to the second portion of the request, which seeks statistical information on the complaints. To the extent information responsive to the remainder of the request existed on the date the city received

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<sup>1</sup>Although you also raise section 552.022 of the Government Code, we note section 552.022 is not an exception to disclosure. Rather, this provision enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under the Act or other law. *See* Gov't Code § 552.022.

<sup>2</sup>We 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.

the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We also note, and you acknowledge, the remaining responsive information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). Because the information at issue is subject to section 552.022(a)(1), it must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. Although you seek to withhold the information subject to section 552.022 under section 552.107 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 676 at 6 (2002) (attorney-client privilege under section 552.107 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.107 does not make information confidential for purposes of section 552.022. Therefore, the information subject to section 552.022 may not be withheld 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, 336 (Tex. 2001). Therefore, we will address your assertion of the attorney-client privilege under Texas Rule of Evidence 503.

Texas Rule of Evidence 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 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).

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 contend the submitted information should be withheld under rule 503. You state the Office of the Inspector General (the "OIG") "is a division of the City Attorney's Office and acts under the City Attorney's supervision." You assert the information constitutes communications between OIG employees "in their capacity as attorneys and attorney representatives" and city employees. You state the communications at issue were made for the purpose of the rendition of legal services to the city. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Upon review, however, we find you have failed to demonstrate the submitted employees' complaints document confidential communications between privileged parties. Accordingly, the submitted information is not privileged, and the city may not withhold the submitted information pursuant to rule 503 of the Texas Rules of Evidence. Therefore, the city must release the submitted 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,

A handwritten signature in black ink that reads "Ashley Crutchfield". The signature is written in a cursive style with a large, looped "A" and "C".

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/dls

Ref: ID# 594957

Enc. Submitted documents

c: Requestor  
(w/o enclosures)