



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 9, 2016

Mr. Jimmy Joe Vrzalik  
Commissioner Precinct No. 1  
Kaufman County  
100 North Washington  
Kaufman, Texas 75142

OR2016-10425

Dear Mr. Vrzalik:

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# 609227.

The Precinct No. 1 Commissioner's Office of Kaufman County (the "commissioner's office") received a request for all documents and communications regarding the request to make a specified lane into a county road. You state the commissioner's office has released some information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes agendas and minutes of public meetings. The agenda and minutes of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code §§ 551.022* (minutes of open meeting are public records and shall be available for public inspection), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting). Although you raise section 552.107, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Therefore, the submitted agendas and minutes of the public meetings must be released pursuant to sections 551.022 and 551.041 of the Government Code.

Next, we note some of the remaining 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 remaining information contains a contract relating to the receipt or expenditure of funds by the commissioner's office that is subject to section 552.022(a)(3) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* The commissioner's office seeks to withhold the information subject to section 552.022(a)(3) under section 552.107 of the Government Code. However section 552.107 is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 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 at issue 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 the commissioner's office's assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022. We will also consider the commissioner's office's argument under section 552.107 against disclosure of the information not subject to section 552.022.

Texas Rule of Evidence 503 encompasses 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 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).

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. Upon a demonstration of all three factors, the information 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You state the information at issue is part of an attorney-client privileged communication between counsel for the commissioner’s office and representatives of the commissioner’s office, made for the purpose of effectuating legal representation. You also state the communication has been kept confidential. Based on these representations and our review of the information at issue, we agree this information consists of a privileged attorney-client communication. Accordingly, the commissioner’s office may withhold the information subject to section 552.022(a)(3) of the Government Code under rule 503 of the Texas Rules of Evidence, which we have marked.

Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed 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 unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

As noted, you state the remaining information consists of attorney-client privileged communications between counsel for the commissioner's office and representatives of the commissioner's office, made for the purpose of effectuating legal representation. You also state the communications have been kept confidential. Based on these representations and our review of the information at issue, we agree the remaining information consists of privileged attorney-client communications. Accordingly, the commissioner's office may withhold the remaining information under section 552.107(1) of the Government Code.

In summary, the submitted agendas and minutes of the public meetings must be released pursuant to sections 551.022 and 551.041 of the Government Code. The commissioner's office may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The commissioner's office may withhold the remaining information under section 552.107(1) of the Government Code.

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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/dls

Ref: ID# 609227

Enc. Submitted documents

c: Requestor  
(w/o enclosures)