



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2016

Ms. Brandy Wingate Voss
Counsel for the City of Rio Grande
Law Offices of Brandy Wingate Voss, PLLC
820 East Hackberry Avenue
McAllen, Texas 78501

OR2016-15596

Dear Ms. Voss:

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# 617615.

The City of Rio Grande (the "city"), which you represent, received a request for specified contracts and checks involving named individuals. You state you are releasing some information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Disciplinary Rule of Professional Conduct 1.05.¹ You also state the request may implicate the interests of Grande Garbage Collection Co., LLC ("Grande") and a named individual. Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted information.²

You acknowledge, and we agree, the city failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.103 and 552.107 of the Government Code and Texas Rule of Evidence 503 are discretionary in nature; they serve only to protect a governmental body's interests. As such, the city's claims under these exceptions and privilege are not compelling reasons to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Although we understand you to raise section 552.103 on behalf of the named individual and Grande, this provision may only be raised by a governmental body and not private parties. *See* Open Records Decision Nos. 575 at 2 (1990), 551 at 3 (1990) (section 552.103 enables governmental entities to protect their position in litigation), 542 at 4 (litigation exception does not implicate third-party rights and may be waived by governmental body). Further, although you reference *Abbott v. City of Dallas*, 453 S.W. 3d 580, 587-89 (Tex. App.—Austin 2014, pet. filed) and *City of Dallas v. Paxton*, No. 13-1300397-CV, 2015 WL 601974 (Tex. App.—Corpus Christi Feb. 12, 2015, pet. filed) (mem. op.), we note petitions for review were filed with the Texas Supreme Court on January 27, 2015 and March 26, 2015, respectively. With regard to your claim under Texas Disciplinary Rule of Professional Conduct 1.05, we note rule 1.05 concerns the confidentiality of client information. *See* Tex. Disciplinary R. Prof'l Conduct Rule 1.05(a)(1). This office has concluded, in the open records context, an attorney's duty of confidentiality is limited to attorney-client privileged material. *See* Open Records Decision No. 574 at 2-5 (1990) (discussing rule 1.05(a)(1) in context of predecessor provision of section 552.107(1)). Thus, given its limitation in the open records context, the applicability of rule 1.05 also cannot overcome the presumption of openness of section 552.302. Consequently, the city may not withhold any of the information at issue pursuant to section 552.103 of the Government

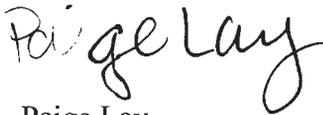
²You inform us you represent the city, the named individual, and Grande and have submitted comments on their behalf.

Code, section 552.107 of the Government Code, Texas Rule of Evidence 503, or Texas Disciplinary Rule of Professional Conduct 1.05. Accordingly, 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 617615

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)