



November 6, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-5110

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154442.

The Texas Department of Public Safety (the "department") received a request for information regarding the new Department of Public Safety Houston Regional Headquarters building currently under construction. The requestor subsequently modified her request to include a request for information regarding the purchase of land for the building. You state that the department has released some of the responsive information to the requestor. You claim, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with Rule 503 of the Texas Rules of Evidence. We have considered the exception you claim and reviewed the submitted information.

We first note that one of the documents you submitted as responsive to the present request is dated August 24, 2001. The Public Information Act applies only to information in existence at the time the governmental body receives the request for information. *See Open Records Decision Nos. 452 at 2-3 (1986)* (document is not within the purview of the act if, when a governmental body receives a request for it, it does not exist), *342 at 3 (1982)* (Act applies only to information in existence, and does not require the governmental body to prepare new information). Accordingly, the request for information and the modified request received by the department on August 20, 2001, and August 21, 2001, respectively, do not apply to the submitted document that was created after that date.

We will now address the exception you raise with respect to the remaining information. You argue that the submitted information is excepted under the attorney-client privilege as encompassed in Rule 503 of the Texas Rules of Evidence. This office generally does not address discovery and evidentiary rules that may or may not be applicable to information submitted by a governmental body. *See Open Records Decision No. 416 (1984)*. We acknowledge that the Texas Supreme Court recently held that "[t]he Texas Rules of Civil

Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001). The submitted documents, however, do not fall into the categories of information in section 552.022. Because the submitted information does not fall into a section 552.022 category, we conclude that the submitted information may not be withheld on the basis of Rule 503 of the Texas Rules of Evidence.

We note, however, that the attorney-client privilege is also found in section 552.107(1) of the Government Code. Section 552.107(1) excepts information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]" While section 552.107(1) appears to apply to information within rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, this office has determined that section 552.107 cannot be applied as broadly as written to information in the possession of an attorney for a governmental body. Open Records Decision No. 574 (1990). Section 552.107(1) was found to protect only the attorney's communication of legal advice or opinion to the client and communications from a client to an attorney where those communications are made in confidence and in furtherance of the attorney rendering professional legal service to the governmental body. *Id.* at 5. Moreover, section 552.107(1) does not except purely factual information from disclosure. *Id.* We determine the applicability of section 552.107(1) on a case-by-case basis. We agree that much of the submitted information reflects either client confidences or an attorney's legal advice or opinions. The department may therefore withhold the information we have marked under section 552.107. The remaining unmarked information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 154442

Enc: Submitted documents

c: Ms. Anna Werner
KHOU-TV11
P.O. Box 11
Houston, Texas 77001-0011
(w/o enclosures)