



January 22, 2002

Ms. Karen C. Gladney  
Associate General Counsel  
Texas Association of Counties  
Post Office Box 2131  
Austin, Texas 78768-2131

OR2002-0310

Dear Ms. Gladney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157588.

The Texas Association of Counties (the "association") received a request for:

1. A copy of Professional Claims Managers Litigation Management Guidelines . . . .
2. A copy of initial report including comprehensive analysis of case and evaluation of potential damages in regards to Manry, et al. vs. Van Zandt County, Texas, et al., . . . .
3. A copy of any subsequent reports produced in response to PCM Litigation Management Guidelines for the Manry case.
4. A copy of initial report including comprehensive analysis of case and evaluation of potential damages . . . for Looney vs. Hrobar and Van Zandt County . . . .
5. A copy of any subsequent reports produced in response to PCM Litigation Management Guidelines for the Looney case.
6. A non-certified photo-copy of the deposition of Nancy Hrobar as taken in Looney vs. Hrobar and Van Zandt County.
7. A non-certified photo-copy of the deposition of Vicki Looney as taken in Looney vs. Hrobar and Van Zandt County.

8. Non-certified, photo-copies of the depositions of Vicki Looney, Helen Hale, Christi Lowery, Kelli Williams and Nancy Hrobar (if existing) in Manry et al vs. Van Zandt County.
9. A copy of the issue analysis entitled "facts of case" in regards to Manry, et al vs. Van Zandt County et, al, . . . .
10. A copy of the document analysis of plaintiff's original complaint . . . in regards to Manry, et al vs. Van Zandt County.

You indicate that you have released information responsive to categories 1, 6, 7, and 8 of the request. You also indicate that the association does not have information responsive to categories 9 and 10 of the request. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You contend that you have already requested a decision from this office with respect to some of the information responsive to categories 2, 3, 4, and 5 of the request. You further contend that additional documents responsive to categories 2, 3, 4, and 5 are excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You indicate that the association has already requested a decision from this office with respect to some of the information responsive to categories 2, 3, 4, and 5 of the request. We ruled on that request in Open Records Letter No. 2001-5486 (2001) and determined, in part, that certain attorney suit reports could be withheld under Rule 503 of the Texas Rules of Evidence, while other memoranda could be withheld under section 552.103 of the Government Code. It appears that some of the same information we found to be excepted from disclosure in Open Records Letter No. 2001-5486 (2001) is at issue in this file. Furthermore, it does not appear that the facts and circumstances surrounding our prior ruling have changed since the issuance of that ruling. Consequently, we find that you may rely upon Open Records Letter No. 2001-5486 (2001) as a previous determination to withhold the information we ruled could be withheld under Rule 503 and section 552.103. See Open Records Decision No. 673 (2001). We have marked the information that is subject to the previous determination.

With respect to the remainder of the submitted information, we note that some of the information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 . . . .

Gov't Code § 552.022(a)(1). The submitted information contains several completed reports subject to this provision. These reports must be released unless they are excepted under section 552.108 of the Government Code or are confidential under other law. You do not contend that the submitted information is excepted from disclosure under section 552.108 of the Government Code. Furthermore, sections 552.103 and 552.107 are discretionary exceptions and are not "other law" for the purpose of section 552.022. Open Records Decision Nos. 663 (1999) (governmental body may waive sections 552.103 and 552.111), 630 at 4 (1994) (governmental body may waive section 552.107(1)). Nevertheless, Rule 503 of the Texas Rules of Evidence is considered "other law" for the purpose of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information at issue is confidential under Rule 503.

Rule 503(b)(1) provides:

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 layer 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.

A communication is "confidential" if 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. Tex. R. Evid. 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. Upon a demonstration of all three factors, the document containing privileged information is 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.--Houston [14th Dist.] 1993, no writ).

All of the submitted reports were sent from attorneys representing Van Zandt County (the "county") to Professional Claims Managers, Inc. ("PCM") regarding litigation involving the county. You indicate that PCM is an agent of the association's County Government Risk Management Pool (the "pool"), which provides liability coverage to the county. Furthermore, you state that the pool is a representative of the county under Rule 503(a)(2)(A) because, under the agreement between the pool and the county, the pool is specifically authorized "to provide a defense for the county, including the employment of defense counsel and a claims manager." Finally, you state that the reports were made for the sole purpose of facilitating the rendition of legal services to the county. Based on your arguments and our review of the submitted information, we agree that the submitted reports consist of privileged communications between the county's attorneys and PCM. *See* Tex. R. Civ. P. 503; *In re Fontenot*, 13 S.W.3d 111, 113-14 (Tex. App.--Fort Worth 2000). Consequently, you may withhold the submitted reports, which we have marked, under Rule 503 of the Texas Rules of Evidence.

With respect to the submitted information that was not ruled upon in Open Records Letter No. 2001-5486 (2001) and is not subject to section 552.022, we will address your argument under section 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* at 5. Based on the information you have provided, we agree that the portion of the information that is neither subject to our prior determination nor subject to section 552.022 of the Government Code consists of attorney advice and opinion and may therefore be withheld under section 552.107 of the Government Code.

In summary, you may rely on our ruling in Open Records Letter No. 2001-5486 (2001) to withhold some of the submitted information. You may withhold the submitted reports under Rule 503 of the Texas Rules of Evidence. Finally, you may withhold the remainder of the submitted information under section 552.107 of the Government Code. Based on this finding, we need not reach the remainder of your arguments.

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).

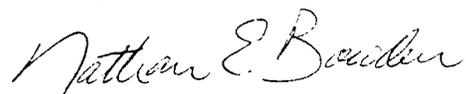
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department 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 Texas Building and Procurement 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 157588

Enc: Submitted documents

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