



May 28, 2002

Mr. Brad Young  
Mr. Alan J. Bojorquez  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701-2443

OR2002-2850

Dear Mr. Young and Mr. Bojorquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163536.

The City of Brady (the "city"), which you represent, received a request for (1) all billing from [the] Bickerstaff law firm from September 2000 to the present; (2) the management letter concerning a recent city audit; and (3) billing for the audit and the number of copies of the audit that were furnished to city hall. The city states that it has released most of the information that is responsive to item no. 1 of the request and all of the information that is responsive to item no. 3. The city claims that the remaining requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the requested attorney fee bills are subject to section 552.022 of the Government Code. Section 552.022 provides that

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:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). Attorney fee bills must be released under section 552.022 unless they are expressly confidential under other law. Sections 552.107(1) and 552.111 of the Government Code are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived. As such, these exceptions do not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive section 552.107(1)), 470 at 7 (1987) (governmental body may waive section 552.111). Therefore, we do not address your arguments under sections 552.107(1) and 552.111 with respect to the attorney fee bills.

The attorney-client privilege also is found, however, in rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and 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). Thus, we will determine whether the information at issue is confidential under rule 503.

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. 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. *Id.* 503(a)(5).

Thus, 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 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

The city asserts that designated portions of the attorney-fee bills are protected by the attorney-client privilege under rule 503. We conclude that the city has shown that some of the information in question constitutes privileged attorney-client communications. We have marked the information that the city may withhold under Texas Rule of Evidence 503.

Next, we address the city's claim under section 552.111 of the Government Code with regard to the requested "management letter." Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (holding that personnel-related communications not involving policymaking were not excepted from public disclosure under section 552.111). Section 552.111 is applicable to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task that is within the authority of the governmental body. *See* Open Records Decision Nos. 631 at 2 (1995), 344 at 7 (1982).

The city informs us that the management letter is a communication to the mayor and city council members from a certified public accountant who also performed the recent city audit.

The city asserts that the letter contains policy recommendations and conclusions relating to the audit. The city also states that the letter relates to a prospective modification of city accounting practice and procedure. Based on these representations, we conclude that the city has shown that the management letter is excepted from disclosure under section 552.111. As this exception is dispositive, we need not address the city's claim with regard to the management letter under section 552.101.

In summary, the city may withhold the information that we have marked in the attorney fee bills under Texas Rule of Evidence 503. The remaining information in the attorney fee bills must be released. The city may withhold the management letter under section 552.111 of the Government Code.

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).

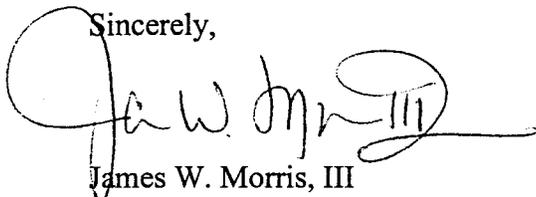
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 163536

Enc: Marked documents

c: Mr. Bill Ricks  
1105 South Bridge Street  
Brady, Texas 76825  
(w/o enclosures)