



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2007

Mr. Brent A. Money  
Law Office of Robert L. Scott  
P.O. Box 1353  
Greenville, Texas 75403-1353

OR2007-07565

Dear Mr. Money:

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# 281100.

The Greenville Fire Department (the "department"), which you represent, received a request for 1) "[a] complete copy of the investigation conducted by the City of Greenville which led to the indefinite suspension of [a specified individual]" and 2) "[a] complete copy of [a specified individual's] personnel file, including any and all commendations, performance evaluations, and disciplinary actions." You state that information pertaining to the second category has been released to the requestor. You claim that the submitted information that is responsive to the first category is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted 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 consists of a completed investigation. Section 522.022 makes this information expressly public unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Although you seek to withhold the submitted information under sections 552.103 and 552.107 of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *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 Gov't Code § 552.103); Open Records Decision Nos. 76 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, sections 552.103 and 552.107 are not other law that makes information confidential for the purposes of section 552.022. Therefore, the department may not withhold any of the submitted information under sections 552.103 and 552.107 of the Government Code. However, the Texas Supreme Court has held that the Texas Rules of Evidence are other law within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 3 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is found at Texas Rule of Evidence 503. We will therefore consider your arguments under rule 503.

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 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).

You state that Exhibit E consists of confidential communications between the department’s attorney and the department that were made in connection with the rendition of professional legal services to the department. You also state that the communications were intended to be confidential. Having considered your representations and reviewed the information at issue, we find you have established that most of the information at issue constitutes privileged attorney-client communications that may be withheld under rule 503. However, we conclude you have not established that the remaining information at issue consists of privileged attorney-client communications; therefore, the department may not withhold this information, which we have marked for release, under rule 503.

We note that some of the remaining information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the information we have marked pertains to the home address of a peace officer, this information must be withheld under section 552.117(a)(2).

To the extent that the individuals whose information is at issue are not currently licensed peace officers, but are current or former department employees, section 552.117(a)(1) may apply. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security numbers, and family member information of a current or former

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees timely elected to keep their personal information confidential, the department must withhold the information we have marked under section 552.117(a)(1). The department may not withhold this information under section 552.117(a)(1) if the employees did not make timely elections to keep the information confidential.

We also note that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, pursuant to section 552.130, the department must withhold the Texas motor vehicle record information we have marked.

In summary, the department may withhold the information in Exhibit E under Texas Rule of Evidence 503, except for the information that we have marked for release. To the extent the information we have marked pertains to the home address of a peace officer, this information must be withheld under section 552.117(a)(2) of the Government Code. If section 552.117(a)(2) does not apply, the department may withhold the information under section 552.117(a)(1) to the extent it pertains to a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The department must also withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining submitted information must be released.<sup>2</sup>

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

---

<sup>2</sup>Because the records being released contain information relating to the requestor's client that would be excepted from disclosure to the general public to protect the client's privacy, the department must request another ruling from our office if it receives a future request for this information from individuals other than this requestor's client or his authorized representative. *See* Gov't Code § 552.023 (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

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).

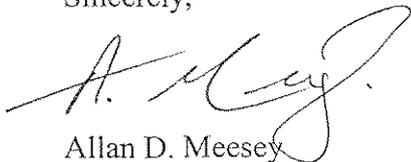
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/sdk

Ref: ID# 281100

Enc. Submitted documents

c: Mr. John A. Haring  
Lyon, Gorsky, Haring & Gilbert L.L.P.  
3131 McKinney Avenue, Suite 100  
Dallas, Texas 75204  
(w/o enclosures)