



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2008

Mr. Michael K. Kallas  
For the City of Farmers Branch  
Boyle & Lowry, L.L.P.  
4201 Wingreen, Suite 108  
Irving, Texas 75062-2763

OR2008-09698

Dear Mr. Kallas:

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# 314554.

The City of Farmers Branch (the "city"), which you represent, received a request for all monthly bills paid to a specified public relations firm from June 2007 to April 11, 2008. You state that you will release the amount of the invoices. You claim that the remaining requested 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 Rule of Civil Procedure 192.5.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note that on January 11, 2008, the city received a request which asked in part for, "Copies of all legal bills paid to any other attorney or consultant who has done work on Ramos v. City of Farmers Branch [or] Villas at Parkside Partners, et. al., v. Farmers Branch ... from June 2007 to present." We also note that on March 14, 2008, the city received a request from the same requestor which asked in part for, "Copies of all legal bills paid to any other attorney or consultant who has done work on Ramos v. City of Farmers Branch [or] Villas at Parkside Partners, et. Al., v. Farmers Branch ... from June, 2007 to present." In response to the present request for a specified public relations firm's monthly bills from June 2007 to April 11, 2008, you state that the bills were generated as part of several lawsuits in which the [c]ity is currently involved:

*Guillermo Ramos v. City of Farmers Branch, et al.*, 116<sup>th</sup> District Court,  
Dallas County, Case No. 06-12227; *Guillermo Ramos v. City of Farmers*

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<sup>1</sup>We note that although the city raises Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, it failed to do so within the ten business day deadline prescribed by section 552.301(b). Accordingly, we do not address Rule 1.05. See Gov't Code §§ 552.301, 302.

*Branch, et al.*, 116<sup>th</sup> District Court, Dallas County, Case No. 07-070436; *Guillermo Ramos v. City of Farmers Branch, Texas, et al.*, 68<sup>th</sup> District Court, Dallas County, Case No. 08-01277; *Villas at Parkside Partners d/b/a Villas at Parkside, et al. v. The City of Farmers Branch, Texas*; in the Case No. 3:06-cv-2371-L, U.S. District Court, Northern District of Texas, Dallas Division.

You also state that the public relations firm assisted the city's law firm with legal media services regarding the city's pending litigation.

Our office requested clarification from the city in order to determine (1) whether any of the submitted bills were responsive to the January 11, 2008 and March 14, 2008 requests, in response to which we issued Open Records Letter Nos. 2008-03879 (2008) and 2008-07586 (2008); (2) if any of the submitted bills were submitted to our office for review in response to those previous requests; and (3) whether or not the city had possession of or access to any of the submitted bills at the time those prior requests were received. *See* Gov't Code § 552.303(c) (providing that attorney general may give written notice to governmental body that additional information is necessary to render a decision). In correspondence to our office, you responded that the city "was not aware that separate bills from the [public relations] firm existed until the [present request was received.]" The city has neither demonstrated that the monthly bills in existence as of March 14, 2008 were not responsive to the previous requests nor has the city asserted that it did not have access to such bills. *See id.* § 552.022(a)(2). Accordingly, we find that most of the monthly bills at issue were responsive to the requestor's previous requests. Furthermore, based on the city's statement that it was unaware of the existence of these bills at the time the previous two requests for rulings were made, we understand that the city only submitted attorney's bills, and not the public relations firm's bills, in response to those requests. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301 of the Government Code for the information that existed as of March 14, 2008. *See id.* § 552.301(b) (governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request); *see also id.* § 552.301(e) (governmental body must submit certain required items within fifteen business days of receipt of written request).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.103 and 552.107 of the Government Code, Texas Rule of Civil Procedure 192.5 and Texas Rule of

Evidence 503, these exceptions and rules are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *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. 677 at 10 (2002) (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive sections 552.103 and 552.107); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the city has waived its claims under sections 552.103 and 552.107 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5 for the information that was responsive to the two previous requests.

As for the submitted information that was not responsive to the previous requests, we note that the requestor asserts that the city is in violation of the procedural requirements of the Act. Section 552.301(d)(1) of the Government Code requires a governmental body that requests an attorney general decision to withhold information to provide the requestor, within ten business days of receipt of the request for information, a written statement that it has asked for an attorney general decision. Gov't Code § 552.301(d)(1). The city states in its brief that it received the request on April 11, 2008. The city faxed its written statement to this office on April 25, 2008, and the fax indicates that the statement was also sent to the requestor. The requestor, in notifying our office of a potential procedural violation, states, "It is now April 29, and I have heard nothing." Whether the city timely sent its notice of the request for a decision and copy of the written comments to the requestor are questions of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Therefore, based on the city's representations and our review, we conclude that the city complied with this aspect of the procedural requirements of section 552.301 in requesting this ruling for the information created after March 14, 2008.

Next, we note that the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." Gov't Code § 552.022(a)(3). Thus, the city must release this information under section 552.022, unless it is expressly confidential under other law or is excepted from disclosure under section 552.108 of the Government Code. Although you seek to withhold the information at issue 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 id.* § 552.007; ORD Nos. 676

at 10-11 and 665 at 2 n.5. 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 city may not withhold any of the information at issue under section 552.103 or section 552.107. However, the Texas Supreme Court has held that the Texas Rules of Evidence and Texas Rules of Civil Procedure are other law within the meaning of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under rule 503 and rule 192.5 for the information subject to section 552.022 of the Government Code.

Rule 503 of the Texas Rules of Evidence enacts the attorney-client privilege and provides in part:

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

You state that the information at issue constitutes confidential attorney-client communications between or among lawyers or lawyer representatives of the city made for the purpose of facilitating the rendition of professional legal services. You explain that the bills at issue were sent from the public relations firm at issue to the city's law firm who subsequently sent them to the city. Accordingly, the city may withhold the information at issue, which we have marked, on the basis of the attorney-client privilege under Texas Rule of Evidence 503.<sup>2</sup>

In summary, the city may withhold the information we have marked on the basis of the attorney-client privilege under Texas Rule of Evidence 503. The remaining information must be released.

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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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge that decision by suing the governmental

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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.

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Sincerely,



Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 314544

Enc. Submitted documents

c: Ms. Carol Dingman  
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(w/o enclosures)