The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2008

Mr. Michael K. Kallas
Boyle & Lowry, L.L.P.
4201 Wingreen, Suite 108
Irving, Texas 75062-2763

OR2008-15410

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# 327217.

The City of Farmers Branch (the "city"), which you represent, received two requests from the same requestor for several categories of information pertaining to the city's legal expenses. You state that you have released some of the requested information to the requestor. You claim that the submitted 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 Disciplinary Rule of Professional Conduct 1.05.[1] We have considered your arguments and reviewed the submitted information.

Initially, we note that some of the submitted information appears to have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2008-10407 (2008) and 2008-09642 (2008). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in these prior rulings, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the city may continue to rely on Open Records Letter Nos. 2008-10407 and 2008-09642 as previous determinations

[1]Although you also raised sections 552.101 and 552.102 of the Government Code as exceptions to disclosure, you have not submitted arguments in support of the applicability of those exceptions. Therefore, we assume you no longer urge these exceptions. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

and withhold or release the identical information in accordance with these rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the information not encompassed by the previous rulings, we will address the submitted arguments.

We next note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) (16) provides for the required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(16). Although you seek to withhold the submitted information under sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *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. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (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 city may not withhold any of the submitted information under section 552.103 or section 552.107. In addition, as the Texas Disciplinary Rules of Professional Conduct are not considered other law for purposes of section 552.022, we do not address your argument under Rule 1.05; thus, none of the submitted information may be withheld on this basis, either. *See* ORD 676 at 3-4. However, the Texas Supreme Court has held that "the 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). We will therefore consider your argument under Rule 503 of the Texas Rules of Evidence for the submitted information.

Texas Rule of Evidence 503 enacts 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 the submitted information contains confidential communications between the city's attorneys and city representatives that were made for the purposes of facilitating the rendition of professional legal services to the city. You also state that the communications were intended to be and remain confidential. We note, however, that you have failed to identify any of the parties to the communications in the submitted information. *See* ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in rule 503); *see generally* Open Records Decision No. 150 (1977) (stating that predecessor to the Act places burden on governmental body to establish why and how exception applies to requested information); *Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). However, upon review, we have been able to discern that certain individuals are privileged parties. Accordingly, we have marked the information that is protected by the attorney-client privilege and may therefore be withheld pursuant to rule 503 of the Texas Rules of Evidence.

We find, however, that you have not demonstrated how any of the remaining information constitutes confidential communications between privileged parties made for the purpose of facilitating the rendition of professional legal services to the city. Therefore, no portion of the remaining submitted information may be withheld pursuant to the attorney-client privilege under rule 503. As you raise no other exceptions to disclosure, the remaining information must be released to the requestor.

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 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,

Bill Dobie
Assistant Attorney General
Open Records Division

WJD/ma

Ref: ID# 327217

Enc. Submitted documents

c: Ms. Carol Dingman
13223 Glad Acres Drive
Farmers Branch, Texas 75243
(w/o enclosures)

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2008

Mr. Michael K. Kallas
Boyle & Lowry, L.L.P.
4201 Wingreen, Suite 108
Irving, Texas 75062-2763

OR2008-15410

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# 327217.

The City of Farmers Branch (the "city"), which you represent, received two requests from the same requestor for several categories of information pertaining to the city's legal expenses. You state that you have released some of the requested information to the requestor. You claim that the submitted 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 Disciplinary Rule of Professional Conduct 1.05.[1] We have considered your arguments and reviewed the submitted information.

Initially, we note that some of the submitted information appears to have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2008-10407 (2008) and 2008-09642 (2008). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in these prior rulings, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the city may continue to rely on Open Records Letter Nos. 2008-10407 and 2008-09642 as previous determinations

[1]Although you also raised sections 552.101 and 552.102 of the Government Code as exceptions to disclosure, you have not submitted arguments in support of the applicability of those exceptions. Therefore, we assume you no longer urge these exceptions. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

and withhold or release the identical information in accordance with these rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the information not encompassed by the previous rulings, we will address the submitted arguments.

We next note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) (16) provides for the required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(16). Although you seek to withhold the submitted information under sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *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. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (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 city may not withhold any of the submitted information under section 552.103 or section 552.107. In addition, as the Texas Disciplinary Rules of Professional Conduct are not considered other law for purposes of section 552.022, we do not address your argument under Rule 1.05; thus, none of the submitted information may be withheld on this basis, either. *See* ORD 676 at 3-4. However, the Texas Supreme Court has held that "the 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). We will therefore consider your argument under Rule 503 of the Texas Rules of Evidence for the submitted information.

Texas Rule of Evidence 503 enacts 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 the submitted information contains confidential communications between the city's attorneys and city representatives that were made for the purposes of facilitating the rendition of professional legal services to the city. You also state that the communications were intended to be and remain confidential. We note, however, that you have failed to identify any of the parties to the communications in the submitted information. *See* ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in rule 503); *see generally* Open Records Decision No. 150 (1977) (stating that predecessor to the Act places burden on governmental body to establish why and how exception applies to requested information); *Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). However, upon review, we have been able to discern that certain individuals are privileged parties. Accordingly, we have marked the information that is protected by the attorney-client privilege and may therefore be withheld pursuant to rule 503 of the Texas Rules of Evidence.

We find, however, that you have not demonstrated how any of the remaining information constitutes confidential communications between privileged parties made for the purpose of facilitating the rendition of professional legal services to the city. Therefore, no portion of the remaining submitted information may be withheld pursuant to the attorney-client privilege under rule 503. As you raise no other exceptions to disclosure, the remaining information must be released to the requestor.

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 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,

Bill Dobie
Assistant Attorney General
Open Records Division

WJD/ma

Ref: ID# 327217

Enc. Submitted documents

c: Ms. Carol Dingman
13223 Glad Acres Drive
Farmers Branch, Texas 75243
(w/o enclosures)