



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2010

Mr. Bob Schell
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2010-02918

Dear Mr. Schell:

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# 372355.

Dallas County (the "county") received a request for the total amount of money paid to a specified law firm for appellate legal work on a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.103 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, which provides in pertinent 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:

...

(3) 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). The submitted information pertains to the expenditure of funds by the county that falls within the purview of subsection 552.022(a)(3). Therefore, the county may only withhold this information if it is confidential under "other law." Although you raise section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects the 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 section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the county may not withhold the submitted information under section 552.103. However, because you also raise section 552.101, which does constitute "other law" for the purposes of section 552.022, we will address this exception for the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. In support of your claim under section 552.101, you inform us that a third party, the plaintiff in the litigation related to the information at issue, made a motion before the court to compel production of all fee bills submitted for services rendered by the law firm at issue. You also inform us that the court denied the motion to compel production of the information on the basis that because the county was not seeking attorney's fees, the bills were not relevant. However, after reviewing the unsigned order on the motion to compel, we have no indication that the court in denying the motion has *prohibited* the county from releasing the billing information at issue to the public, nor do we have any indication that the court found the information to be confidential. Because the Act and the procedures for discovery in litigation serve distinct purposes, information that is privileged from discovery is not necessarily protected from required public disclosure under the Act. *See* Gov't Code §§ 552.005 (the Act does not affect the scope of civil discovery), .0055 (subpoena duces tecum or request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be request for information under the Act). Therefore, we find that the court order does not make the submitted information confidential for purposes of the Act, and the county may not withhold the submitted information under section 552.101 of the Government Code. As you raise no further exceptions to disclosure, the county must release the submitted information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 372355

Enc. Submitted documents

c: Requestor
(w/o enclosures)