



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2011

Ms. Cara Leahy White  
Taylor Olson Adkins Sralla Elam L.L.P.  
For City of Weston  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2011-00344

Dear Ms. White:

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# 405146.

The City of Weston (the "city"), which you represent, received similar requests from three individuals for: (1) correspondence between certain city officials, the district attorney, and the sheriff's office; (2) a specified letter from the U.S. Department of Justice; (3) minutes from certain council meetings; (4) correspondence between the mayor, city secretary and a developer concerning a waste water treatment plant; and (5) correspondence between certain city officials and the Texas Commission on Environmental Quality. You claim some of the requested information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also considered comments submitted by two of the requestors. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded that section 552.101 does not encompass other exceptions in the Act or discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note, and you acknowledge, that some of the information responsive to the requests at issue was the subject of a previous ruling by this office. In Open Records Letter No. 2010-18827 (2010), this office issued a ruling pertaining to information responsive to requests similar to the requests at issue here. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2010-18827 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). However, to the extent the information in the current requests is not encompassed by that previous decision, we will address your arguments for the remaining information.

Next, we note that some of the requested information is subject to section 552.022 of the Government Code, which provides in part:

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;

(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)(3), (16). In this instance, the requested information includes engagement letters between the city and several law firms and attorney fee bills. Thus, the city must release the engagement letters and fee bill information pursuant to section 552.022(a), unless the information is expressly confidential under "other law." Sections 552.107 and 552.108 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 can be waived). As such, sections 552.107 and 552.108 are not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the requested fee bills or engagement letters under section 552.107 or section 552.108 of the Government

Code. However, the Texas Supreme Court has held 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). The attorney-client privilege, which you claim under section 552.107, is found at Texas Rule of Evidence 503. Accordingly, we will determine whether the city may withhold any of the requested information subject to section 552.022 under rule 503.

Texas Rule of Evidence 503 enacts the attorney-client privilege, providing in relevant 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 it is 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 information from disclosure under rule 503, a governmental body must: (1) show 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 the communication is confidential by explaining it was not intended to be disclosed to third persons and 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 claim the attorney-client privilege for portions of the attorney fee bills and for the engagement letters. You have generally identified the parties to the communications. You state the communications at issue were made for the rendition of legal services; they were intended to be confidential; and they have remained confidential. Based on your representations and our review, the city may withhold the engagement letters and the information contained in the attorney fee bills that we have marked under Texas Rule of Evidence 503. As the city has not demonstrated the attorney-client privilege for any of the remaining information subject to section 552.022, none of it may be withheld under rule 503. As you assert no other exceptions to disclosure, the remaining information subject to section 552.022 must be released.

We turn next to the requested information that is not subject to section 552.022. You assert sections 552.107 and 552.108 of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). The elements of the privilege under section 552.107 are the same as those discussed for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See Open Records Decision No. 676 at 6–7 (2002)*. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information at issue consists of communications between the city and the city's attorneys. You have generally identified the parties to the communications. You state the communications at issue were made for the rendition of legal services; they were intended to be confidential; and they have remained confidential. Based on your representations and our review of the documents, we conclude the information we have marked falls within the protections of the attorney-client privilege and may be withheld under section 552.107 of the Government Code.

Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert, and provide supporting documentation from the Collin County Criminal District Attorney's Office, that the information you seek to withhold under section 552.108 relates to a pending criminal investigation and release of the information would interfere with the detection,

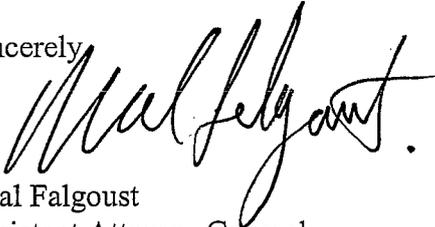
investigation, and prosecution of the alleged crime. Based on these representations and our review, we conclude the city may withhold the information at issue under section 552.108(a)(1) of the Government Code. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

In summary, the city must continue to rely on Open Records Letter No. 2010-18827 as a previous determination and withhold or release the information at issue there in accordance with that ruling. The city may withhold the information we have marked under Texas Rule of Evidence 503 and section 552.107 of the Government Code. The city may withhold the information you have marked under section 552.108 of the Government Code. The remaining information must be released.

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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 405146

Enc. Submitted documents

c: Requestors  
(w/o enclosures)