



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2011

Ms. Candice M. Gambrell  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 368  
Houston, TX 77001

OR2011-08880

Dear Ms. Gambrell:

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# 422147 ORR # 18469).

The City of Houston (the "city") received a request for two specified investigations conducted by the city's Office of the Inspector General (the "OIG"). You state the city will make some information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information consists of two completed investigations. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Section 552.107 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As such, section 552.107 is not other law that makes information confidential for the purposes of section 552.022; therefore, the city may not withhold the submitted information under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that makes information expressly confidential for the

purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your argument under Texas Rule of Evidence 503 for the submitted information.

Texas Rule of Evidence 503(b)(1) provides the following:

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).

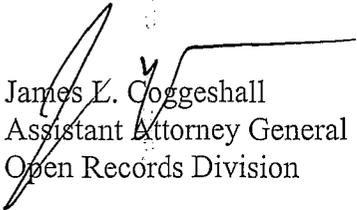
Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved 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. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state, and provide documentation showing, that pursuant to City of Houston Executive Order 1-39 (Revised), the OIG is a division of the Office of the City Attorney and acts under that office's supervision. You also state the submitted information consists of communications to and from employees of the OIG in their capacities as attorney representatives and various city employees in their capacities as clients and client representatives that were made in furtherance of the rendition of professional legal services to the city. You claim these communications were not intended for release to third parties, and the confidentiality of the communications has been maintained. Therefore, after reviewing your arguments and the submitted information, we agree the submitted information constitutes privileged attorney-client communications that the city may withhold under Texas Rule of Evidence 503. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 334-35 (Tex. App.—Austin 2000, pet. denied) (attorney's entire investigative report protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice).

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 422147

Enc. Submitted documents

c: Requestor  
(w/o enclosures)