



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2011

Mayor John T. Knight
City of Milford
P.O. Box 538
Milford, Texas 76670-0538

OR2011-09325

Dear Mayor Knight:

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# 422441.

The City of Milford (the "city") received a request for all documents pertaining to a specified dispute between the city and a named individual. You state some information has been or will be made available to the requestor. You claim the submitted information is excepted from disclosure pursuant to section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains a document filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under other law. You claim the court-filed document is excepted from disclosure under section 552.107 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See id.* § 552.007; 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). Therefore, the city may not withhold the court-filed document, which we have marked, under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of

¹We understand from the substance of your arguments that you raise section 552.107 of the Government Code.

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). Accordingly, we will consider the applicability of the attorney-client privilege under Texas Rule of Evidence 503 for this information. We will also address your argument under section 552.107 for the information not subject to section 552.022.

Texas Rule of Evidence 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. 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 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 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 contend the court-filed document constitutes a privileged attorney-client communication. We understand this communication was among city attorneys, employees, and officials and was made to facilitate the rendition of legal advice to the city. We further understand you to represent this communication was made in confidence and has maintained its confidentiality. However, we note the court-filed document was communicated to a non-privileged party. Accordingly, to the extent this non-privileged court-filed document, which we have marked, exists separate and apart from the privileged communication, it may not be withheld under Rule 503 of the Texas Rules of Evidence. If the marked court-filed document does not exist separate and apart from the privileged communication, the city may withhold this marked information under Rule 503 of the Texas Rules of Evidence.

Next, we consider your argument under section 552.107 of the Government Code for the information not subject to section 552.022. Section 552.107(1) protects information coming within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed for Rule 503. 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 assert the remaining information consists of privileged attorney-client communications. We understand these communications are between city attorneys, employees, and officials and were made to facilitate the rendition of legal advice to the city. We further understand these communications were made in confidence and have maintained their confidentiality. Based on your representations and our review, we find you may generally withhold the remaining information under section 552.107 of the Government Code. We note some of the attachments to the otherwise privileged communications were communicated with non-privileged parties. Thus, to the extent the non-privileged attachments, which we have marked, exist separate and apart from the otherwise privileged communications, they may not be withheld under section 552.107(1).

In summary, to the extent the court-filed document we have marked does not exist separate and apart from the privileged communication, the city may withhold this marked information under Rule 503 of the Texas Rules of Evidence. With the exception of the non-privileged attachments that exist separate and apart from the remaining documents, the city may withhold the remaining information under section 552.107(1) of the Government Code.

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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett", followed by a horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 422441

Enc. Submitted documents

c: Requestor
(w/o enclosures)