



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2011

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-11957

Dear Ms. Njuguna:

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# 427339 (GC No. 18592).

The City of Houston (the "city") received a request for information related to the Office of the Inspector General ("OIG") complaint number 111-1000004-001 and related document trail. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note some of the requested information appears to be the subject of a previous ruling issued by this office, Open Records Letter No. 2010-17492 (2010). In that ruling, this office concluded that the city must withhold certain information under section 552.117 of the Government Code and must release the remaining information. You now argue information responsive to the current request that was also responsive to the previous request is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. Section 552.007 of the Government Code, however, provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to

section 552.007, the city may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you now raise sections 552.103 and 552.107 for the previously released information, these sections are general exceptions to disclosure that do not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (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), 676 at 10-11 (2002) (attorney-client privilege under section 552.107 (1) may be waived). Therefore, to the extent any of the information responsive to the current request was previously ruled upon and ordered to be released by this office, the city may not now withhold such information under sections 552.103 or 552.107 of the Government Code. However, with respect to the remaining requested information that was not previously ruled upon in Open Records Letter No. 2010-17492, we will address your arguments against disclosure of this information.

Next, we address the requestor's assertion the city failed to comply with its procedural obligations under section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The city states it received the request for information on May 24, 2011. The city states, and provides documentation confirming, it received clarification of the request on June 7, 2011. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Thus, the ten-business-day deadline for requesting a ruling from this office was June 21, 2011, and the fifteen-business-day deadline was June 28, 2011. The city requested a ruling from this office and submitted the information required by section 552.301(e) on June 13, 2011. Accordingly, we find the city complied with the procedural requirements in requesting this decision.

Next, we note the submitted information is made expressly public under section 552.022 of the Government Code, which provides in relevant part as follows:

(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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation subject to section 552.022(a)(1). The city may only withhold the submitted information if it is excepted from disclosure under section 552.108 of the Government Code or if it expressly made confidential under other law. Although you raise section 552.103 and section 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 section 552.103); Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, sections 552.103 and 552.107 are not "other law" that make 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 of the Government Code. However, we note the attorney client-privilege found in the Texas Rule of Evidence 503 is "other law" within the meaning of section 552.022(a). *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your attorney-client privilege argument under Texas Rule of Evidence 503 for the submitted information.

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 state, 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 records are communications, and their attachments, to and from employees of the OIG in their capacity as attorney representatives and various city employees in their capacity as clients and client representatives that were made in furtherance of the rendition of professional legal services to the city. You state these communications were made in confidence and have maintained their confidentiality. Upon review, we find portions of the submitted information, which we have marked, consist of privileged attorney-client communications that may be withheld under Rule 503 of the Texas Rules of Evidence. However, we note some of the privileged communications include attachments that are responsive to the request at issue. If these attachments, which we have marked, exist separate and apart from the otherwise privileged communications, then the city may not withhold these attachments under Rule 503 of the Texas Rules of Evidence. We further note the remaining information was communicated to non-privileged parties. Accordingly, no portion of the remaining information may be withheld under Rule 503 of the Texas Rules of Evidence.

In summary, with the exception of any information previously ruled upon in Open Records Letter No. 2010-17492, the city may generally withhold the information we have marked

under rule 503 of the Texas Rules of Evidence. However, if the attachments we have marked, exist separate and apart from the otherwise privileged communications, then the city may not withhold these attachments under rule 503 of the Texas Rules of Evidence. As no further exceptions against disclosure are raised, the remaining information must be released.<sup>1</sup>

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 427339

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>1</sup>We note that the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.