



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 28, 2011

Ms. Mariví Gambini  
City Attorney's Office  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR2011-14065

Dear Ms. Gambini:

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# 431283.

The City of Irving (the "city") received two requests from the same requestor for information pertaining to the billing and charges related to the city's outside counsel. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged pursuant to rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note Exhibit A is subject to section 552.022(a) of the Government Code, which provides in part that:

the following categories of information are public information and not excepted from required disclosure under [the Act] 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; [and]

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

...

(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, Exhibit A consists of information in an account, voucher, or contract relating to the expenditure of public funds by the city and information in attorney fee bills. Thus, the city must release this information pursuant to sections 552.022(a)(3) and 552.022(a)(16) unless it is expressly confidential under "other law." Sections 552.103 and 552.107(1) of the Government Code are discretionary exceptions to disclosure that protect a 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); 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), 663 (1999) (governmental body may waive section 552.103). As such, sections 552.103 and 552.107(1) are not other laws that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold Exhibit A under section 552.103 or section 552.107(1) of the Government Code. However, the Texas Supreme Court has held that the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for Exhibit A. We will also consider your arguments under sections 552.103 and 552.107(1) for Exhibit B.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 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(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 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 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 assert portions of Exhibit A document privileged attorney-client communications between outside attorneys, attorney representatives, city attorneys, and city representatives that were made for the purpose of the rendition of legal services to the city. You have identified some of the parties to the communications. You state the communications at issue were intended to be confidential and have remained confidential. Based on these representations and our review of the information at issue, we conclude the city may withhold the information we have marked in Exhibit A under Texas Rule of Evidence 503. However, the remaining information in Exhibit A either reveals communications with parties you have not identified as privileged or does not reveal communications. Accordingly, the remaining information in Exhibit A is not privileged pursuant to rule 503 and may not be withheld on that basis. As you raise no other arguments against disclosure of this information, it must be released pursuant to section 552.022.

Next, we consider your argument under section 552.107 of the Government Code for Exhibit B. 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 state Exhibit B consists of an e-mail between the city’s outside counsel and the city attorney made for the purpose of the rendition of legal services to the city. You also state the communication at issue was intended to be confidential and has remained confidential. Based on these representations and our review of the information at issue, we conclude

Exhibit B constitutes a privileged attorney-client communication. Accordingly, the city may withhold Exhibit B under section 552.107(1) of the Government Code.<sup>2</sup>

In summary, the city may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. The city must release the remaining information in Exhibit A pursuant to section 552.022 of the Government Code. The city may withhold Exhibit B 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 431283

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling on Exhibit B is dispositive, we need not address your remaining argument against its disclosure.