



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2011

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

OR2011-15424

Dear Ms. Evans:

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# 433746 (GC Nos. 18818, 18855).

The City of Houston (the "city") received two requests for information related to complaint number 111-1100139-001. You claim the information submitted as Exhibit 2 is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that one of the submitted documents is not responsive to the instant requests for information, as it does not relate to the specified complaint. This ruling does not address the public availability of any information that is not responsive to the requests, and the city need not release that information in response to these requests.

We next note that Exhibit 2 is a completed investigation. Section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. One such category of expressly public information under section 552.022 is a completed report, audit, evaluation, or investigation made of, for, or by a governmental body. *See* Gov't Code § 552.022(a)(1). Information subject to section 552.022(a)(1) may only be withheld if it is excepted under section 552.108 or is confidential under "other law." *Id.*

You claim the investigative records are excepted from disclosure under section 552.107 of the Government Code. Section 552.107 is a discretionary exception that does not make

information confidential. Open Records Decision No. 676 at 6 (2002) (Gov't Code § 552.107 is not other law for purposes of Gov't Code § 552.022); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, you may not withhold Exhibit 2 under section 552.107 of the Government Code. However, the attorney-client privilege is also found in rule 503 of the Texas Rules of Evidence. Because the Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code, we will consider your arguments under rule 503. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001).

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. 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 that 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 that 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 explain the records are communications or document communications between employees of the Office of the Inspector General, a division of the City Attorney's Office, and employees of various city departments. You state these communications were made in furtherance of providing legal services to the city. You also state these communications were intended to be confidential and their confidentiality has been maintained. After reviewing your arguments and the records at issue, we agree these documents are privileged attorney-client communications. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding that when attorney is hired to conduct investigation in legal capacity, report produced by attorney is privileged). Therefore, the city may withhold Exhibit 2 under rule 503 of the Texas Rules of Evidence.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 433746

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)