



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2012

Mr. James T. Jeffrey, Jr.
For City of Weatherford
Law Offices of Jim Jeffrey
2214 Park Springs Boulevard
Arlington, Texas 76013

OR2012-04403

Dear Mr. Jeffrey:

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# 448612.

The City of Weatherford (the "city"), which you represent, received a request for all investigative reports or other city records related to a specified incident. You state the city has released some of the requested information. You claim that some of the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code, and privileged under Texas Rule of Civil Procedure 192.5.¹ We have considered your arguments and reviewed the submitted information.

Initially, you inform us that the city asked the requestor for clarification of the portion of the request concerning other city records related to the specified incident. *See* Gov't Code § 552.222 (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). You inform us that the requestor has not responded to this request for clarification. However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8 (1990). In this case, as you have submitted information responsive to the portion of the request at issue for our review and raised exceptions to disclosure for this information, we consider the city to have made a good-faith effort to identify the information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information. We further determine the city has no obligation at this time to release any additional information

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

that may be responsive to the portion of the request for which the city has not received clarification. However, if the requestor responds to the request for clarification, the city must again seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas*, 304 S.W.3d at 387.

Next, we note the submitted information labeled pages 042 through 057 is not responsive to the request because it was created after the request was received. This decision does not address the public availability of the non-responsive information and that information need not be released in response to the present request.

We next note the information labeled pages 001, 006 through 041, and 058 through 074 is subject to section 552.022 of the Government Code, which provides in pertinent 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 unless made confidential under this chapter or 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; and

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). This information consists of completed reports subject to section 552.022(a)(1) and court-filed documents subject to section 552.022(a)(17). You seek to withhold the information labeled pages 006 through 041 under sections 552.103 and 552.107 of the Government Code and Texas Rule of Civil Procedure 192.5. However, sections 552.103 and 552.107 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). As such, sections 552.103 and 552.107 do not make information confidential for the purposes of section 552.022. Therefore, because the information labeled pages 006 through 041 is subject to 552.022, it may not be withheld under section 552.103 or section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence and the Texas Rules of Civil Procedure 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 your assertion of the attorney-client privilege under Texas Rule of Evidence 503 and the attorney work product privilege under Texas Rule of Civil Procedure 192.5 for the information labeled pages 006 through 041, which is subject to

section 552.022. Additionally, because sections 552.117 and 552.130 of the Government Code are confidentiality provisions for purposes of section 552.022, we will address the applicability of these exceptions to all of the information subject to section 552.022.² We will also address the applicability of section 552.117 to the information labeled pages 002 through 005, which is not subject to section 552.022.

We first address your attorney-client privilege claim for the information labeled pages 006 through 041. Texas Rule of Evidence 503 enacts the attorney-client privilege, providing in relevant part:

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).

Thus, in order to withhold 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

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 indicate the information at issue consists of communications between the city, the city's attorney, and the Texas Municipal League Intergovernmental Risk Pool (the "TML") that were made in furtherance of the rendition of professional legal services to the city. You explain the TML is the city's risk-liability insurance carrier. Further, you indicate that the communications at issue were intended to be confidential and have remained confidential. Based on your representations and our review, we conclude the information labeled pages 006 through 041 consists of privileged attorney-client communications that the city may withhold under Texas Rule of Evidence 503.³

We note portions of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. In this instance, the information at issue pertains to a deceased city employee. Because the protection afforded by section 552.117 includes "current or former" officials or employees, we note the protection generally does not lapse at death, as it is also intended to protect the privacy of the employee's family members. We note, however, because the protection of social security numbers under section 552.117 is intended solely to protect the privacy of the employee, it lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229; H-917. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5* (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, if the deceased city employee whose personal information we have marked timely requested confidentiality under section 552.024, the city must withhold this information under section 552.117(a)(1) of the Government Code. However, if this individual did not timely elect to keep his personal information confidential, none of the remaining information we have marked may be withheld under section 552.117(a)(1).

³As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

We also note a portion of the remaining information is subject to section 552.130(a)(1) of the Government Code. This section provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1). Upon review, we conclude the city must withhold the driver's license information we have marked in the remaining information under section 552.130(a)(1) of the Government Code.

In summary, the city may withhold the information labeled pages 006 through 041 under Texas Rule of Evidence 503. If the deceased city employee whose personal information we have marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code; otherwise, none of this information may be withheld under section 552.117(a)(1). The city must withhold the driver's license information we have marked under section 552.130 of the Government Code. As no other exceptions to disclosure are raised for the remaining information, the city must release it.⁴

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

⁴We note the information being released contains the partial social security number of a living person. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

Ref: ID# 448612

Enc. Submitted documents

c: Requestor
(w/o enclosures)