



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2012

Ms. Michelle Hunter
Executive Director
State Bar of Texas
P.O. 12487
Austin, Texas 78711

OR2012-07318

Dear Ms. Hunter:

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# 453785.

The State Bar of Texas (the "state bar") received a request for information pertaining to advertisements by two named individuals and a named law firm, including information pertaining to a specified website and information submitted to the state bar Advertising Review Committee, during a specified time period. You state the state bar has released some of the requested information. Although we understand the state bar takes no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Mauzé & Bagby, PLLC ("M&B"). Accordingly, you state, and provide documentation showing, you notified M&B of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from M&B. We have considered the submitted arguments and reviewed the submitted information.

M&B asserts the submitted information is excepted from disclosure under the attorney-client privilege found in section 552.107(1) of the Government Code and the attorney work-product

privilege found in section 552.111 of the Government Code.¹ Section 552.107 excepts from disclosure “information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct[.]” Gov’t Code § 552.107(1). Section 552.111 of the Government Code excepts from public disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” *Id.* § 552.111. However, sections 552.107(1) and 552.111 protect the interests of governmental bodies, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived), 630 at 4 (governmental body may waive attorney-client privilege under section 552.107), 522 (1989) (discretionary exceptions intended to protect only interests of governmental body as distinct from exceptions intended to protect information deemed confidential by law or interests of third parties). Therefore, because the state bar did not submit any arguments in support of withholding the submitted information pursuant to section 552.107(1) or section 552.111, the state bar may not withhold any portion of the submitted information under section 552.107(1) or section 552.111 of the Government Code.

We note some of the submitted information consists of a personal e-mail address subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the state bar must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure. As no other exceptions have been raised, the remaining information must be released.

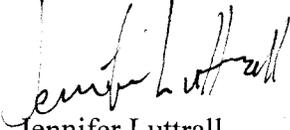
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹Although M&B raises section 552.101 of the Government Code in conjunction with the attorney client privilege and the attorney work product privilege, this office has concluded section 552.101 does not encompass discovery privileges or other exceptions found in the Act. Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). M&B claims the submitted information is protected under the attorney-client privilege based on Texas Rule of Evidence 503 and under the attorney work product privilege based on Texas Rule of Civil Procedure 192.5. In this instance, however, the information is properly addressed here under section 552.107(1), rather than rule 503, and section 552.111, rather than rule 192.5. ORD 676 at 3.

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

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 453785

Enc. Submitted documents

- c: Requestor
(w/o enclosures)
- c: Mr. Tom Bagby
Mauze & Bagby, P.L.L.C.
2632 Broadway, Suite 402 South
San Antonio, Texas 78215
(w/o enclosures)
- c: Mr. George Mauze
Mauze & Bagby, P.L.L.C.
2632 Broadway, Suite 402 South
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