



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 3, 2012

Ms. Dorothy Palumbo  
Interim City Attorney  
City of Galveston  
P.O. Box 779  
Galveston, Texas 77553-0779

OR2012-10257

Dear Ms. Palumbo:

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# 457947 (ORR# 12-214 and 12-216).

The City of Galveston (the "city") received two requests for information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.116 of the Government Code, and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part:

- (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[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed report and audit subject to section 552.022(a)(1) of the Government Code. A completed report or audit must be released under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Although you seek to withhold the submitted information under sections 552.107 and 552.116 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waive of discretionary exceptions). Therefore, the city may not withhold this information under section 552.107 or section 552.116 of the Government Code. However, we note the attorney-client privilege encompassed by section 552.107 is also found in Texas Rule of Evidence 503. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Further, you raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, which is also "other law" that make information confidential for purposes of section 552.022. *Tex. Comm'n on Envtl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Accordingly, we will consider the applicability of rule 503, section 552.101 in conjunction with the common-law informer's privilege, and section 552.108 to the submitted information.

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 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 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 inform us that the submitted information consists of communications between or among the city’s attorney, auditor, manager, mayor, council members, and staff that were made in furtherance of the rendition of professional legal services to the city. You also inform us that these communications were intended to be, and have remained, confidential. Based on your representations and our review, we find the city has demonstrated the applicability of the attorney-client privilege to the submitted information. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding attorney’s entire investigative report was protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purposes of providing legal services and advice). Thus, the city may withhold this information under Texas Rule of Evidence 503.<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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'K L Conyer', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/dls

Ref: ID# 457947

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)