



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 14, 2013

Ms. Paige H. Saenz  
McKamie Krueger, L.L.P.  
223 West Anderson Lane, Suite A105  
Austin, Texas 78752

OR2013-02575

Dear Ms. Saenz:

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# 478782.

The City of Bartlett (the "city"), which you represent, received two requests from the same requestor for specified categories of information pertaining to a named city employee and information pertaining to a specified criminal case. You claim the submitted information is excepted from disclosure under sections 552.107, 525.108, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-20729 (2012). In that ruling we determined the following: the city (1) must continue to rely on Open Records Letter Nos. 2012-09846 (2012), 2012-12803 (2012), 2012-16204 (2012), and 2012-17494 (2012) as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings; (2) may withhold some information under Texas Rule of Evidence 503 and section 552.107(1) of the

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

Government Code, unless the non-privileged e-mails within that information were maintained separate and apart from the otherwise privileged e-mail strings in which they appear; (3) must withhold some information under section 552.101 of the Government Code in conjunction with section 182.052 of the Utilities Code if the customer whose information was at issue requested confidentiality of her personal information before the city received the request for the information at issue; (4) with the exception of basic information, may withhold some information under section 552.108(a)(1) of the Government Code; (5) must withhold some information under section 552.117(a)(1) of the Government Code if the employee at issue timely elected confidentiality of that information and if the cellular service at issue is not paid for by a governmental body; (6) must withhold account numbers under section 552.136 of the Government Code; (7) must withhold e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release; and (8) must release the remaining information. We have no indication the law, facts, or circumstances on which this prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2012-20729 as a previous determination and withhold or release the information in accordance with that ruling. To the extent the submitted information is not subject to Open Records Letter No. 2012-20729, we will consider your arguments against disclosure.

The submitted information contains documents that are subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

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]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). Exhibits D and E contain completed audit reports created for the city that are subject to section 552.022(a)(1) and Exhibit C contains a contract with the city that is subject to section 552.022(a)(3). You assert the information subject to section 552.022 is excepted from release under sections 552.107, 552.111, and 552.116 of

the Government Code. However, these sections are discretionary and do not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold the information subject to section 552.022 under section 552.107, 552.111, or 552.116. However, information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code. You assert Exhibit E, which is subject to section 552.022(a)(1), is excepted from disclosure under section 552.108 of the Government Code. In addition the Texas Supreme Court has held the Texas Rules of Evidence are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your arguments under section 552.108 for the information in Exhibit E and the attorney-client privilege under Texas Rule of Evidence 503 for all the information subject to section 552.022.

Rule 503(b)(1) provides the following:

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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You explain the information subject to section 552.022 consists of communications made between attorneys for the city and a third party auditor hired by the city's attorneys in order for the city's attorneys to provide legal advice to the city. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the city and have remained confidential. Based on your representations and our review, we conclude the city may withhold pursuant to Texas Rule of Evidence 503 the information we have marked that is subject to section 552.022 of the Government Code.<sup>2</sup>

You claim the remaining information is excepted from disclosure under section 552.107(1) of the Government Code. Section 552.107(1) also protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107(1) are the same as those discussed for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7. 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*, 922 S.W.2d at 923.

You state the remaining information constitutes communications between attorneys for the city, a third party auditor, and city representatives that were made for the purpose of providing legal services to the city. As previously discussed, you explain the third party auditor was hired by the city's attorneys and communicated with the city's attorneys in order for the city's attorneys to provide legal advice to the city. You state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the remaining information consists of privileged

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<sup>2</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

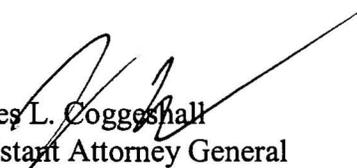
attorney-client communications that the city may withhold under section 552.107(1) of the Government Code.<sup>3</sup>

To conclude, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2012-20729, the city must continue to rely on that ruling as a previous determination and withhold or release the information in accordance with it. The city may withhold the information we have marked under Texas Rule of Evidence 503. The city may withhold the remaining information under section 552.107 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/akg

Ref: ID# 478782

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.