



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2014

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-02684

Dear Ms. Folsom:

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# 512258 (GC No. 20947).

The City of Houston (the "city") received a request for information related to the city's Office of the Inspector General ("OIG") complaint number 111-1200288-001 (HCCSC). You claim the requested information is excepted from disclosure under section 552.108 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. Additionally, you provide documentation showing you have notified the Harris County Community Supervision and Corrections Department ("HCCSCD") of its right to submit comments to this office explaining why the submitted information should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered your claims and reviewed the submitted information.

¹As of the date of this letter, this office has not received comments from HCCSCD explaining why any of the submitted information should not be released.

You acknowledge the submitted information, Exhibits 2 and 3, consists of a completed investigation by the city's OIG that is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *Id.* § 552.022(a)(1). You claim the information is excepted under section 552.108 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). Accordingly, we will address your claims under section 552.108 of the Government Code and rule 503.

Rule 503 of the Texas Rules of Evidence enacts the attorney-client privilege. 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(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 attorney-client privileged 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 the submitted information consists of an OIG investigative file and contains communications between employees of the OIG in their capacity as attorney representatives, and city employees in their capacities as clients and client representatives. You state the OIG is a division of the city attorney's office and acts under the city attorney's supervision. You also state the communications were made to facilitate the rendition of professional legal services to the city. You assert the communications were intended to be confidential and that confidentiality has been maintained. Having considered your representations and reviewed the information at issue, we find you have established most of the submitted information is protected by the attorney-client privilege. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (attorney's entire investigative report protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice). Accordingly, the city may withhold the information we have marked under rule 503 of the Texas Rules of Evidence.² However, the remaining information consists of communications with individuals you have not demonstrated are privileged parties. Therefore, this information is not privileged under rule 503 and the city may not withhold it on this basis.

We next address your claim under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency possesses information relating to a pending case of a law enforcement agency, the non-law enforcement agency may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the

²As our ruling is dispositive, we do not address your remaining claim for this information.

information. We note section 552.108 is not applicable to records of an investigation that is purely administrative in nature and did not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution).

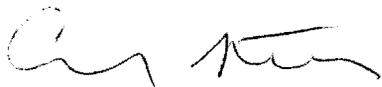
You argue the remaining information is subject to section 552.108. In this case, you inform us the information at issue pertains to a completed internal administrative investigation conducted by the OIG. You do not provide any arguments explaining how the internal investigation resulted in a criminal investigation or prosecution. Accordingly, we find you have failed to demonstrate section 552.108 is applicable to any of the information at issue. Thus, the city may not withhold any of the remaining information under section 552.108 of the Government Code.

In summary, the city may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. 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.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to 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# 512258

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Harris County Community Supervision and Corrections Department
c/o Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368
(w/o enclosures)