



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2014

Mr. Paul Tomme
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2014-03709

Dear Mr. Tomme:

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# 514349.

The Dallas/Fort Worth International Airport (the "airport") received a request for information related to taxicabs at the airport. You state the airport will release some of the requested information. We understand you will redact bank account numbers pursuant to section 552.136 of the Government Code.¹ You claim the remaining requested information is excepted from disclosure under sections 552.103, 552.107, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.²

¹Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

²We 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.

Initially, although you state the airport has submitted a representative sample of e-mail communications, we note none of the submitted information consists of e-mails. Therefore, we presume the airport has released any such responsive e-mail communications, to the extent such information existed and was maintained by the airport when the airport received the instant request for information. If it has not done so, then the airport must release any such information at this time. *See* Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

Next, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides for the required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(16). In this instance, the information submitted as Exhibit C consists of attorney fee bills. Thus, the airport must release this information pursuant to section 552.022(a)(16) unless the information is confidential under the Act or other law. *See id.* Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the airport may not withhold the information in Exhibit C under section 552.103. You also seek to withhold the submitted attorney fee bills in Exhibit C under Texas Rule of Evidence 503, which the Texas Supreme Court has held is "other law" that makes information expressly confidential for purposes of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore address your argument under Texas Rule of Evidence 503 for the information in Exhibit C.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides the following:

A client has a privilege to refuse to disclosure 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 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 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 assert the submitted attorney fee bills contain privileged attorney-client communications between outside counsel for the airport and the airport's legal department. You state the communications at issue were made for the purpose of facilitating the rendition of legal services to the airport. You indicate the communications have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review, we find the airport has established portions of the information in Exhibit C, which we have marked, constitute attorney-client communications under rule 503. Thus, the airport may withhold the information we have marked pursuant to Texas Rule of Evidence 503. However, the remaining information in Exhibit C does not document a communication for purposes of rule 503. Accordingly, none of the remaining information may be withheld under Texas Rule of Evidence 503.

You seek to withhold portions of the information submitted as Exhibit A under section 552.130 of the Government Code. Section 552.130 provides, in part, as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130(a)-(b). Chapter 730 provides for the disclosure of "motor vehicle records" in certain circumstances. *See* Trans. Code §§ 730.005 (requiring disclosure of motor vehicle record information in certain circumstances), 730.006 (providing for disclosure of motor vehicle record information upon written consent), 730.007 (enumerating the requestors eligible to receive motor vehicle record information). We note, the term "motor vehicle record" does not include a motor carrier record. *Id.* § 730.003(4). A "motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a roadway or highway in this state. *See id.* § 643.001(6). As the records in this instance pertain to motor carriers, we conclude chapter 730 is inapplicable. Accordingly, the airport must withhold the motor vehicle record information you and we have marked in Exhibit A pursuant to section 552.130 of the Government Code.³

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential. Gov't Code § 552.136. This office has determined toll tag identification numbers constitute access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the airport must withhold the toll tag identification numbers we have marked under section 552.136 of the Government Code.

In summary, the airport may withhold the information we have marked in Exhibit C pursuant to Texas Rule of Evidence 503. The airport must withhold the motor vehicle record information you and we have marked in Exhibit A pursuant to section 552.130 of the Government Code. The airport must also withhold the toll tag identification numbers we

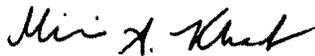
³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

have marked under section 552.136 of the Government Code. 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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 514349

Enc. Submitted documents

c: Requestor
(w/o enclosures)