



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2014

Mr. Robert Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606

OR2014-10038

Dear Mr. Ray:

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# 525581.

The City of Longview (the "city") received four requests for information related to the city's July Fourth event and performer Ted Nugent. You state "the great majority of the requested information has been or will be made available to the requestors." You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code or privileged under rule 503 of the Texas Rules of Evidence. We have considered your claims and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

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

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov't Code § 552.022(a)(3), (5). The submitted information contains a contract amendment subject to section 552.022(a)(3) and budget information subject to section 552.022(a)(5). Although you raise section 552.107(1) of the Government Code, this section is a discretionary exception that protects a governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 6 (2002) (attorney-client privilege under section 552.107 may be waived), 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(1). However, we note 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). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022. We also will address your claim under section 552.107(1) for the information not subject to section 552.022.

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides:

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). 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state the information at issue consists of attachments to privileged communications between city staff and city attorneys made for the purpose of facilitating the rendition of legal services. You state these communications were intended to be confidential 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 information subject to section 552.022. Thus, the city may generally withhold the information at issue pursuant to rule 503 of the Texas Rules of Evidence. We note, however, one of the communications at issue includes as an attachment a contract amendment. This attachment has been shared with non-privileged parties. Furthermore, this attachment is separately responsive to the request. Therefore, if the contract amendment, which we have marked, is maintained by the city separate and apart from the otherwise privileged communication in which it appears, then the city may not withhold it under rule 503 of the Texas Rules of Evidence, and it must be released. If this attachment does not exist separate and apart from the privileged communication to which it is attached, the city may withhold it under rule 503 of the Texas Rules of Evidence along with the other information subject to section 552.022.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. Gov't Code § 552.107. 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 v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the remaining information consists of confidential communications between city staff and city attorneys made for the purpose of facilitating the rendition of legal services. You state these communications were intended to be confidential 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 remaining information

and, therefore, may withhold this information under section 552.107(1) of the Government Code.

In summary, the city may generally withhold the information subject to section 552.022 of the Government Code, which we have marked, pursuant to rule 503 of the Texas Rules of Evidence. However, if the contract amendment, which we have marked, is maintained by the city separate and apart from the otherwise privileged communication in which it appears, then the city may not withhold it under rule 503 of the Texas Rules of Evidence, and it must be released. The city also may withhold the remaining information, which is not subject to section 552.022, under section 552.107(1) 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.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# 525581

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)