



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 4, 2014

Mr. Jeffrey J. Lehrman  
Counsel for the Corpus Christi Housing Authority  
Anderson, Lehrman, Barre & Maraist, L.L.P.  
1001 Third Street, Suite 1  
Corpus Christi, Texas 78404

OR2014-13519

Dear Mr. Lehrman:

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# 531459.

The Corpus Christi Housing Authority (the "authority"), which you represent, received a request for ten specific categories of information related to the screening, interviewing, recruiting, hiring, and employment of a named individual. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information are 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:

(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). Exhibits C 2 through C 78 consist of a completed investigation that is subject to subsection 552.022(a)(1). The authority must release the completed investigation pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. *See id.* § 552.022(a)(1). Although you assert this information is excepted from disclosure under section 552.107 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 663 at 5 (1999) (waiver of discretionary exceptions), 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the authority may not withhold the completed investigation under section 552.107 of the Government Code. However, the attorney-client privilege is also found in Texas Rule of Evidence 503, which the Texas Supreme Court has held is "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your assertion of the attorney-client privilege under rule 503 for the completed investigation. We will also consider your argument under section 552.101 of the Government Code for the information not subject to section 552.022.

You raise section 552.101 of the Government Code for Exhibit C 79. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential. Section 551.104 of the Open Meetings Act, chapter 551 of the Government Code, provides in part "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* ORD 495. You state the requestor seeks access to the recordings of the three executive sessions of the authority. Based on your representations and our review, we conclude the authority must withhold this information, under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

Next, we address rule 503 for the information subject to section 552.022(a)(1). Texas Rule of Evidence 503(b)(1) 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 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 state Exhibits C 2 through C 78 were obtained by the general counsel for the authority as part of a factual investigation into the hiring of the named individual. You provide an affidavit from the general counsel stating the information at issue was part of his communication to the authority for the purpose of facilitating the rendition of professional legal services. *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). You state the information was not intended to be released to third parties, and the confidentiality has been maintained.

Accordingly, Exhibits C 2 through C 78 may be withheld under rule 503 of the Texas Rules of Evidence.<sup>1</sup>

In summary, the authority must withhold Exhibit C 79 under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. Exhibits C 2 through C 78 may be withheld under rule 503 of the Texas Rules of Evidence.

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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 531459

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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