



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2014

Mr. Quentin D. Price
First Assistant City Attorney
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2014-14562

Dear Mr. Price:

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# 533178 (COB ORR No.'s 05-38 and 06-51).

The City of Beaumont (the "city") received two requests for all billing records submitted by a named individual to the city regarding a specified case and all payment records to a named individual from the city regarding a specified case. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the responsive information was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2011-04907 (2011). In Open Records Letter No. 2011-04907, we ruled the city may withhold the marked information under Texas Rule of Evidence 503 and must release the remaining information to the requestor. As we have no indication the law, facts, and circumstances on which the prior ruling was based has changed, the city must continue to rely on Open Records Letter No. 2011-04907 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so

¹Although you also raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the information that is not subject to Open Records Letter No. 2011-04907, we will consider your arguments against disclosure.

We note the remaining 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]

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). The remaining information is information in an account relating to the expenditure of public funds and attorney fee bills subject to sections 552.022(a)(3) and 552.022(a)(16), respectively. Thus, the remaining information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the remaining information under sections 552.103 and 552.107 of the Government Code. Sections 552.103 and 552.107 are discretionary exceptions and do 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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the remaining information may not be withheld under section 552.103 or section 552.107. The Texas Supreme Court has held, however, 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). Accordingly, we will address your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence for the remaining information.

Texas Rule of Evidence 503 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 remaining information contains confidential communications between attorneys working for the city and employees for the city. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the city and were intended to be and have remained confidential. Based on your representations

and our review, we find the information we marked consist of attorney-client communications. Thus, the information we marked may be withheld under Texas Rule of Evidence 503. However, we find the remaining information either does not reveal communications for purposes of rule 503 or documents communications with individuals you have not demonstrated are privileged. Accordingly, we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information at issue, and the city may not withhold it under rule 503.

In summary, for the information responsive to the previous request, the city must continue to rely on Open Records Letter No. 2011-04907 as a previous determination and withhold or release the identical information in accordance with that ruling. The information we marked may be withheld under Texas Rule of Evidence 503. 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 533178

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)