



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2014

Ms. Tabitha Goodwin
Counsel for Town of Addison
Cowles & Thompson
901 Main Street, Suite 3900
Dallas, Texas 75202

OR2014-18787

Dear Ms. Goodwin:

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# 540162.

The Town of Addison (the "town") received two requests for 1) a copy of the written complaint filed by a named individual against the town's police department and 2) a copy of the contract with a named individual to conduct an investigation of the department or of individual officers of the town's police department. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered the exception you claim and reviewed the submitted information.

We note 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:

...

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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

Gov't Code § 552.022(a)(3). The submitted information consists of a contract subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* Although you seek to withhold the information under section 552.107 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 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 information may not be withheld under section 552.107 of the Government Code. However, 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). Therefore, we will consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted 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 assert the submitted information consists of a confidential communication between an outside attorney hired by the town and a town attorney. You state this communication was made for the purpose of facilitating the rendition of professional legal services, the town has not waived the attorney-client privilege, and the communication has not been disseminated to any third parties. Based on your representations and our review, we find the town has established the submitted information constitutes a privileged attorney-client communications under rule 503. Thus, the town may withhold the submitted information pursuant to Texas Rule of Evidence 503.

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# 540162

Enc. Submitted documents

c: Requestor
(w/o enclosures)