



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 30, 2017

Mr. Jorge L. Trevino, Jr.
Assistant County Attorney
County of Webb
1110 Washington Street, Suite 301
Laredo, Texas 78040

OR2017-02022

Dear Mr. Trevino:

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# 643562.

The Webb County Attorney's Office (the "county attorney's office") received a request for communications between the county attorney's office and several named individuals and specified entities related to a proposed landfill. You indicate the county attorney's office has made some of the requested information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the county attorney's office sought clarification of a portion of the request for information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You state the county attorney's office has not received a response to its request for clarification.

¹Although you also raise section 552.101 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Accordingly, the county attorney's office has no obligation at this time to release any information that might be responsive to this portion of the request. However, if the county attorney's office receives clarification and wishes to withhold any of the information encompassed by the clarified request, the county attorney's office must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). In this case, as the county attorney's office has submitted information responsive to the request and has made arguments against disclosure of the information, we will consider the exceptions you raise.

Next, we note the submitted information contains copies of agendas and minutes of public meetings of the Webb County commissioner's court (the "county"). Minutes and agendas of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See Gov't Code* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting). As a general rule, the exceptions to disclosure found in the Act, such as sections 552.103, 552.107, and 552.111, do not apply to information other statutes make public. *See Open Records Decision* Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the information at issue must be released pursuant to chapter 551 of the Government Code.

Next, we note some of 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:

...

(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; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(5), (17). Portions of the information submitted as Exhibits 6, 7, and 8 consist of budget documents that are subject to section 552.022(a)(5). The county attorney's office must release this information pursuant to section 552.022(a)(5) unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(5). Further, the information submitted as Exhibits 1, 2, and 3 consist of documents that were filed with a court. This information is subject to section 552.022(a)(17) and must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). You seek to withhold the information subject to sections 552.022(a)(5) and 552.022(a)(17) under sections 552.103, 552.107, and 552.111 of the Government Code. However, these exceptions are discretionary in nature 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. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 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), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the county attorney's office may not withhold the information subject to section 552.022 of the Government Code under section 552.103, section 552.107, or section 552.111 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure 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 assertions of the attorney-client privilege under rule 503 of the Texas Rules of Evidence and the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure. Further, we will consider your arguments against disclosure of the remaining information not subject to section 552.022 of the Government Code.

Texas Rule of Evidence 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 to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; 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, orig. proceeding).

You assert the information subject to section 552.022 of the Government Code consists of privileged attorney-client communications between the county attorney's office's attorneys and county attorney's office officials and staff in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the county attorney's office. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the county attorney's office has established the information subject to section 552.022 constitutes attorney-client communications under rule 503. Thus, the county attorney's office may withhold the information at issue pursuant to rule 503 of the Texas Rules of Evidence.

You claim section 552.107 of the Government Code for the remaining information at issue. Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 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 Open Records Decision No. 676 at 6-7 (2002)*. 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 inform us the remaining information consists of communications between the county attorney's office's attorneys and county attorney's office officials and staff in their capacities as clients, made for the purpose of the rendition of legal services to the county attorney's office. You state the communications were intended to be confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the remaining information. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding attorney's entire investigative report was 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). Accordingly, the county attorney's office may withhold the remaining information at issue under section 552.107 of the Government Code.²

In summary, the county attorney's office must release the submitted agendas and minutes of public meetings of the county pursuant to chapter 551 of the Government Code. The county attorney's office may withhold the information subject to section 552.022 of the Government Code under Texas Rule of Evidence 503. The county attorney's office may withhold the remaining information under section 552.107 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 643562

Enc. Submitted documents

c: Requestor
(w/o enclosures)