



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 7, 2017

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2017-17701

Dear Mr. Kopp:

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# 669656 (COSA # W170246, W171082, W171930, W172895, W175507, & W175613).

The City of San Antonio (the "city") received five requests from four different requestors for a specified report and an additional request from a fifth requestor for the specified report and a specified investigation. You state the city has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged pursuant to rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted information. We have also received and considered comments from two of the requestors. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, the city informs us the specified investigation was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-07421 (2016). In that ruling, we concluded: the city must release the custodial death report pursuant

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<sup>1</sup>We note that although you raise section 552.101 of the Government Code, you make no 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 Therefore, we assume you have withdrawn your claim this section applies to the submitted information.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.*

to article 49.18(b) of the Code of Criminal Procedure; (2) with the exception of basic information, the city may withhold certain information under section 552.108(a)(2) of the Government Code; (3) the city must withhold certain information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, section 143.089(g) of the Local Government Code, section 143.090 of the Local Government Code, and common-law privacy; (4) the city must withhold certain information under sections 552.117(a)(2), 552.130, and 552.137 of the Government Code; and (5) the city must release the remaining information at issue. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2016-07421 as a previous determination and withhold or release the specified investigation in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note, and you acknowledge, 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). The submitted information consists of a completed report that is subject to section 552.022(a)(1). The city must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold some of the information at issue under section 552.107 of the Government Code. However, section 552.107 is discretionary in nature 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 submitted information may not be withheld under section 552.107 of the Government Code. You also seek to withhold the information at issue under rule 503 of the Texas Rules of Evidence. 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 at issue.

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 you have indicated consists of a privileged attorney-client communication between the an attorney for the city, a city employee, and outside counsel for the city. You state the communication at issue was made for the purpose of the rendition of legal services to the city. You also state the communication at issue has not been, and was not intended to be, disclosed to third parties. Based on your representations and our review

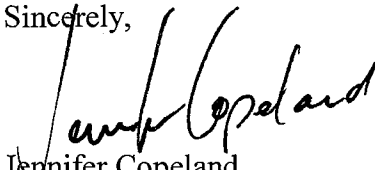
of the information at issue, we find the city has established the information you have indicated constitutes an attorney-client communication under rule 503. Thus, the city may withhold the information you have indicated pursuant to rule 503 of the Texas Rules of Evidence.

In summary, the city must continue to rely on Open Records Letter No. 2016-07421 as a previous determination and withhold or release the specified investigation in accordance with that ruling. The city may withhold the information you have indicated pursuant to rule 503 of the Texas Rules of Evidence. 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](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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/sb

Ref: ID# 669656

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)