



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2017

Ms. Andrea D. Russell
Counsel for City of River Oaks
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2017-21195

Dear Ms. Russell:

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# 675828.

The City of River Oaks (the "city"), which you represent, received a request for specified information pertaining to the requestor during a specified time period.¹ You state the city will redact information under sections 552.130(c) and 552.147(b) of the Government Code, and information pursuant to Open Records Decision No. 684 (2009).² You state the city released some information. You claim the submitted information is excepted from disclosure

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

under section 552.107 of the Government Code.³ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes records that may be subject to section 552.022(a) of the Government Code, which provides, in part, the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). The submitted information contains job descriptions subject to section 552.022(a)(15) of the Government Code if the city considers them to be open to the public under its policies. *Id.* § 552.022(a)(15). You seek to withhold the information at issue under section 552.107 of the Government Code. However, section 552.107 is a 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 information subject to section 552.022, which we marked, 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). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence. Further, we will address your argument against disclosure of the remaining information.

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;

³Although you raise sections 552.101, 552.103, 552.108, and 552.111 of the Government Code, you have not submitted arguments in support of these exceptions; therefore, we assume you have withdrawn them. *See* Gov't Code §§ 552.301, .302.

(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(a)(15) of the Government Code should be withheld under the attorney-client privilege of rule 503. You explain the information at issue was communicated between attorneys for the city and city staff in their capacities as clients. You state the information was communicated for the purpose of the rendition of legal services to the city. 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 city has established the information at issue constitutes a privileged attorney-client communication under rule 503. Thus, the city may withhold the marked information subject to section 552.022(a)(15) of the Government Code pursuant to rule 503 of the Texas Rules of Evidence.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. The elements of the privilege under section 552.107(1) are the same as those discussed above 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. ORD 676 at 6-7. 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*, 922 S.W.2d at 923.

You explain the remaining information was communicated between attorneys for the city and city staff in their capacities as clients. You state the information was communicated for the purpose of the rendition of legal services to the city. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to most of the information at issue. Accordingly, the city may generally withhold the remaining information under section 552.107(1) of the Government Code. However, we note some of the otherwise privileged e-mail strings include e-mails sent to a non-privileged party. Furthermore, if these e-mails are removed from the e-mail strings and stand alone, they are responsive to the instant request. Therefore, if the city maintains these non-privileged e-mails, which we marked, separate and apart from the otherwise privileged e-mail strings in which they appear, then the city may not withhold the non-privileged e-mails under section 552.107(1) of the Government Code.

In summary, if the city considers the marked job descriptions to be open to the public, such information is subject to section 552.022(a)(15) of the Government Code, and may be withheld under rule 503 of the Texas Rules of Evidence. The city may generally withhold the remaining information under section 552.107(1) of the Government Code; however, the city must release the marked non-privileged e-mails if they are maintained separate and apart from the otherwise privileged e-mail strings in which they appear.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 675828

Enc. Submitted documents

c: Requestor
(w/o enclosures)