



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2018

Ms. Ruhee G. Leonard
Assistant County Attorney
Williamson County
405 Martin Luther King Street, Box #7
Georgetown, Texas 78626

OR2018-01065

Dear Mr. Leonard:

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# 692008 (PIA-2017-268).

Williamson County (the "county") received a request for communications among named county employees pertaining to a specified topic during a specified time period and travel expenses of named county employees during a specified time period.¹ We understand the county has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.² We have considered your arguments and reviewed the submitted information.

¹You state the county 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) (holding that when 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).

²We note the county failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e). Nonetheless, because the attorney client privilege is a compelling reason to overcome the presumption of openness, we will consider the applicability of Texas Rule of Evidence 503 and section 552.107(1) of the Government Code to the submitted information. *See id.* § 552.302; *see also* *Paxton v. City of Dallas*, No. 15-0073, 2017 WL 469597 (Tex. Feb. 3, 2017).

You inform us the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in part:

(a) 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:

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

Gov't Code § 552.022(a)(1). You state the submitted information consists of portions of completed reports, evaluations, or investigations conducted by the county regarding the acquisition of certain property. Thus, we agree the submitted information is subject to section 552.022(a)(1). Although you raise section 552.107 of the Government Code for the information, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision No. 676 at 6 (2002) (attorney-client privilege under section 552.107 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the county may not withhold the information under section 552.107 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *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 Texas Rule of Evidence 503.

Rule 503(b)(1) of the Texas Rules of Evidence provides:

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 not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5). Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that 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 that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the submitted information consists of communications among attorneys for the county, county officials, and county employees that were made for the purpose of facilitating the rendition of professional legal services to the county. You further state the communications were intended to be confidential and confidentiality has been maintained. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the county may generally withhold the information at issue under rule 503 of the Texas Rules of Evidence. However, we note one of the otherwise privileged e-mail strings includes an e-mail received from a non-privileged party. If this e-mail is removed from the privileged e-mail string and stands alone, it is responsive to the request for information. Therefore, if the non-privileged e-mail we have marked is maintained by the county separate and apart from the otherwise privileged e-mail string in which it appears, then the county may not withhold this non-privileged e-mail under rule 503 of the Texas Rules of Evidence.

We note the non-privileged e-mail contains an e-mail address of a member of the public. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *See* Gov’t Code § 552.137(a)-(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the county must

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

withhold the e-mail address we have marked under section 552.137 unless the owner of the address affirmatively consents to its release.

In summary, the county may generally withhold the submitted information under rule 503 of the Texas Rules of Evidence; however, the county must release the non-privileged information we have marked if the county maintains it separate and apart from the otherwise privileged e-mail string in which it appears. To the extent the county releases the marked e-mail, the county must withhold the information we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 692008

Enc. Submitted documents

c: Requestor
(w/o enclosures)