



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2018

Mr. Edwin Sullivan
Counsel for Management and Training Corporation
Oberti Sullivan L.L.P.
712 Main Street, Suite 900
Houston, Texas 77002

OR2018-01451

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. This request was originally received by the Open Records Division ("ORD") of this office and assigned ID# 692633. Preparation of this ruling has been assigned instead to the Opinion Committee.

You state that your client, Management and Training Corporation ("MTC"), received a request for specified categories of information pertaining to the requestor, MTC, and two law firms. You tell us MTC has produced some of the requested information to the requestor, but claims the remaining information is excepted from disclosure under Government Code sections 552.103 and 552.107.¹ We have considered the representative samples² of the submitted information you attach as Exhibit 4 and the claimed exceptions.

Some of the submitted information may be the subject of a previous request for information, a result of which this office issued Open Records Letter No. OR2017-14241. In response to

¹You initially raised section 552.111 as additional exception to disclosure. However, you have not submitted written arguments stating how this exception applies to the submitted information. Therefore, we assume you have waived your arguments under these sections. *See* TEX. GOV'T CODE §§ 552.301, .302.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Tex. Att'y Gen. ORD-499 (1988), ORD-497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

OR2017-14241, MTC filed a lawsuit against our office. *See Mgmt. & Training Corp. v. Paxton*, No. D-1-GN-17-003065 (345th Dist. Ct., Travis Cty., Tex. July 6, 2017). Accordingly, to the extent the information at issue in the current request is also information at issue in this lawsuit, we will allow the trial court to resolve the issue whether the information that is the subject of the pending litigation must be released to the public.

To the extent there is information subject to the current request that is not subject to the previous ruling, we consider MTC's arguments.

Initially, we note the submitted information in Exhibit 4 includes a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. *See* TEX. GOV'T CODE § 552.022(a)(17). MTC seeks to withhold the information under section 552.107 of the Government Code. However, this is a discretionary exception that does not make information confidential under the Act. *See* Tex. Att'y Gen. ORD-676 (2002) at 10–11 (attorney-client privilege under section 552.107(1) may be waived), ORD-665 (2000) at 2 n.5 (discretionary exceptions generally). Therefore, the court-filed document 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, 337 (Tex. 2001). We will therefore consider MTC's assertions of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

Texas Rule of Evidence 503 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. *See* Tex. Att’y Gen. ORD-676 (2002) at 6–10. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived 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).

On behalf of MTC, you assert the information is attached to a communication between lawyers, legal staff, and MTC, which communication serves to facilitate the rendition of legal services to MTC. You state the communication at issue was not intended to be, and has not been disclosed to third parties. Based on your representations and our review of the information at issue, we find you have established the information at issue constitutes an attorney-client privileged communication under rule 503. Thus, MTC may withhold the information we have marked in Exhibit 4 pursuant to rule 503 of the Texas Rules of Evidence.

Next, we turn to the remaining information in Exhibit 4 that is not subject to section 552.022 of the Government Code. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* TEX. GOV’T CODE § 552.107(1). 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. *Tex. Att’y Gen. ORD-676* (2002) 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 v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (orig. proceeding) (privilege extends to “entire communication, including facts contained therein”).

On behalf of MTC, you state the remaining information in Exhibit 4 consists of confidential communications involving your office’s lawyers, legal staff, and MTC. You state the communications were made for the purpose of facilitating the rendition of professional legal

services to MTC and these communications have remained confidential. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Therefore, MTC may withhold all the remaining information in Exhibit 4 that is not subject to the previous ruling under section 552.107(1) of the Government Code.³

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,



Charlotte M. Harper
Assistant Attorney General
Opinion Committee

CMH/eb

Ref: ID# 692633

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.