



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 1, 2018

Ms. Erin Higginbotham  
Assistant City Attorney for the City of Lakeway  
Bojorquez Law Firm, PLLC  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2018-04789

Dear Ms. Higginbotham:

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# 696777.

The City of Lakeway (the "city"), which you represent, received a request for e-mails between a named former employee and other city employees during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information contains court-filed documents. 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 made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city seeks to withhold this information under section 552.107 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *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). As such, section 552.107 does not make information confidential for the purposes of section 552.022. Accordingly, the city may not withhold the court-filed documents, which we have marked, under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information

expressly confidential for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider the city's assertion of the attorney-client privilege under Texas Rule of Evidence 503 for this information. Further, we will address your claim under section 552.107 for the submitted information not subject to section 552.022.

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

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 [14<sup>th</sup> Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the information at issue consists of attachments to communications between attorneys for the city, city employees, city officials, and privileged parties that were made for the purpose of facilitating the rendition of professional legal services to the city. You state these communications were intended to be confidential and have remained confidential. Upon review, we find you have established the information at issue constitutes privileged attorney–client communications under rule 503. Thus, the city may withhold the submitted information subject to section 552.022 under Texas Rule of Evidence 503.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. *See* Gov't Code § 552.107(1). The elements of the privilege under section 552.107 are the same as those for rule 503, as noted above. 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* 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. *See Huie*, 922 S.W.2d at 923.

The city states the submitted information not subject to section 552.022 of the Government Code consists of communications involving attorneys for the city, city employees, city officials, and privileged parties that were made for the purpose of facilitating the rendition of professional legal services to the city. You state these communications were intended to be confidential and have remained confidential. Upon review, we find the city has demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the city may withhold the submitted information not subject to section 552.022 under section 552.107(1) of the Government Code.<sup>1</sup>

In summary, the city may withhold the submitted information subject to section 552.022 of the Government Code under Texas Rule of Evidence 503. The city may withhold the submitted information not subject to section 552.022 of the Government Code under section 552.107(1) 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.

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<sup>1</sup>As our ruling is dispositive, we do not address the remaining arguments against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/tdw

Ref: ID# 696777

Enc. Submitted documents

c: Requestor  
(w/o enclosures)