



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 4, 2019

Mr. Joseph R. Crawford  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2019-24730

Dear Mr. Crawford:

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# 785793 (ORR# 26003).

The City of Houston (the "city") received a request for complaints, investigations, and reports involving a named former city employee during a specified time period. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code as well as privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of 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[.]

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<sup>1</sup>The city acknowledges it did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(). Nonetheless, because the exceptions and privilege the city claims can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Gov't Code § 552.022(a)(1). The submitted information includes completed reports and investigations that are subject to section 552.022(a)(1). The city must release the completed reports and investigations pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* The city seeks to withhold the information subject to section 552.022(a)(1) under section 552.101 of the Government Code and under rule 503 of the Texas Rules of Evidence. As section 552.101 of the Government Code applies to confidential information, we will consider the submitted argument under section 552.101 for the information at issue. Further, 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). Accordingly, we will address the city's claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022 of the Government Code. We will also consider the city's argument under section 552.107 against release 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;

(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).

The city states pursuant to City of Houston Executive Order 1-39 (Revised), the city's Office of the Inspector General (the "OIG") is a division of the Office of the City Attorney and acts under that office's supervision. The city informs us the information subject to section 552.022(a)(1) consists of communications between employees of the OIG in their capacities as attorneys and attorney representatives and employees of the city in their capacities as clients and client representatives. The city explains the information was created in furtherance of the rendition of professional legal services to the city. The city states the information at issue was not intended for release to third parties, and the city states it has maintained the confidentiality of the information at issue. Based on these representations and our review, we find the city has demonstrated the applicability of the attorney-client privilege to the information at issue. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding attorney's entire investigative report was protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purpose of providing legal services and advice). Accordingly, the city may withhold the information subject to section 552.022(a)(1) under rule 503 of the Texas Rules of Evidence.

The city claims section 552.107 of the Government Code for the remaining information. Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed 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. *See Open Records Decision No. 676 at 6-7 (2002)*. 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) (privilege extends to entire communication, including facts contained therein).

The city informs us the remaining information consists of communications between the city's attorneys and city officials and staff in their capacities as clients, made for the purpose of the rendition of legal services to the city. The city states the communications were intended to be confidential. Based on these representations and our review, we find the city has demonstrated the applicability of the attorney-client privilege to the information at

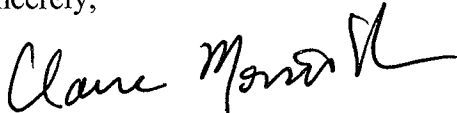
issue. Accordingly, the city may withhold the remaining information under section 552.107 of the Government Code.<sup>2</sup>

In summary, the city may withhold the information subject to section 552.022(a)(1) under rule 503 of the Texas Rules of Evidence and may withhold the remaining information under section 552.107 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/gw

Ref: ID# 785793

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.