



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2019

Ms. Barbara Boulware-Wells
Counsel for City of Ranger
The Knight Law Firm, LLP
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2019-29945

Dear Ms. Boulware-Wells:

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# 793132.

The City of Ranger (the "city"), which you represent, received a request for 1) municipal court citations during a specified period, 2) an invoice for a specified entity's water usage during a specified month, 3) time sheets for specified city employees, 4) a payroll summary for a specified city official, and 5) e-mails sent and received by a named city employee from two specified e-mail accounts during a specified period. You state you are releasing some information with redactions under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address the requestor's contention that the city did not comply with the procedural requirements of the Act. Pursuant to section 552.301(d) of the Government Code, a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for

¹ Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

information. *Id.* § 552.301(d). The requestor asserts he was not timely notified of the request for ruling at issue as required by section 552.301(d) of the Government Code because he received the correspondence at issue after the ten-business-day deadline. The city states it received the request for information on August 2, 2019. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was August 16, 2019. The envelope in which the city submitted to this office the information required by section 552.301(b) is postmarked August 16, 2019. The request for a ruling indicates the requestor was copied on that correspondence and the requestor states the correspondence sent to the requestor including the information required by section 552.301(d) “was mailed on August 16, 2019[.]” *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the requestor has failed to establish the city did not comply with the procedural requirements mandated by section 552.301(d) of the Government Code. Accordingly, we will address the arguments of the city to withhold the information at issue.

Next, 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:

...

(17) information that is also contained in a public court record[.]

Id. § 552.022(a)(17). The submitted information includes a court-filed document that is subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* The city seeks to withhold the information subject to section 552.022 under sections 552.103, 552.107, and 552.108 of the Government Code. However, sections 552.103, 552.107, and 552.108 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); *see also* 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), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the city may not withhold the information subject to section 552.022, which we have marked, under section 552.103, section 552.107, or section 552.108 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 the city’s assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information at issue. Further, we note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the submitted court-filed document may be

withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.130 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.130 for the information at issue.²

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).

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

You state the information subject to section 552.022(a)(17) is attached to a privileged attorney-client communication between city attorneys and city employees and officials in their capacities as clients. You explain the information was communicated for the purpose of the rendition of legal services to the city and that these communications have remained confidential. Based on this representation and our review, we find you have established the attorney-client privilege is generally applicable to the information subject to section 552.022. However, we note the information at issue consists of an attachment seen by non-privileged parties. Furthermore, if this attachment is removed from the e-mail to which it is attached and stands alone, it is responsive to the request for information. Therefore, if the information subject to section 552.022(a)(17) is maintained by the city separate and apart from the otherwise privileged e-mail to which it is attached, then the city may not withhold this attachment under rule 503. Conversely, if the non-privileged attachment subject to section 552.022(a)(17) of the Government Code does not exist separate and apart from the e-mail to which it is attached, the city may withhold it under Texas Rule of Evidence 503.

To the extent the non-privileged attachment we marked is maintained separate and apart from the otherwise privileged e-mail string in which it appears, the attachment includes information subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Accordingly, in the event the non-privileged attachment we marked is maintained separate and apart from the otherwise privileged e-mail string in which it appears, the city must withhold the motor vehicle information we marked under section 552.130 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states release of the remaining information will interfere with a pending criminal investigation or prosecution. Based on this representation, we conclude section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the city may generally withhold the information we marked as subject to section 552.022(a)(17) of the Government Code under Texas Rule of Evidence 503. However, if the information subject to section 552.022(a)(17) of the Government Code is

³ As our ruling is dispositive, we need not address your remaining exceptions to disclosure.

maintained by the city separate and apart from the otherwise privileged e-mail to which it is attached, then the city may not withhold this information under Texas Rule of Evidence 503. If the information subject to section 552.022(a)(17) of the Government Code is maintained separate and apart from the otherwise privileged e-mail string to which it is attached, then the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code and release the remaining information subject to 552.022(a)(17) of the Government Code.⁴ In either instance, the city may withhold the remaining information under section 552.108(a)(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.

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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 793132.

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ In this instance, the information being released contains social security numbers. 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* Gov't Code § 552.147(b).