



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 19, 2022

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

Ms. Jessica N. Morrison  
Assistant County Attorney  
Williamson County Attorney's Office  
405 MLK Street, #7  
Georgetown, Texas 78626

OR2022-14478

Dear Ms. Lentz and Ms. Morrison:

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# 948488.

The Williamson County Sheriff's Office (the "sheriff's office") and Williamson County (collectively, the "county") each received a request for all communications involving named individuals made during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, 552.137, and 552.152 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information, a portion of which consists of a representative sample.<sup>1</sup>

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to the specific information requested or consist of communications involving the named individuals. This ruling does not address the public availability of any information that is not responsive to the request and the county is not required to release such information in response to this request.

Next, we note some of the submitted information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2022-01132 (2022) and 2022-04453 (2022). In Open Records Letter No. 2022-01132, we determined the sheriff's office: (1) may withhold certain information pursuant to rule 503 of the Texas Rules of Evidence; (2) may generally withhold the remaining information under section 552.107(1) of the Government Code; however, if the non-privileged e-mails we marked are maintained by the sheriff's office separate and apart from the otherwise privileged e-mail strings in which they appear and stand alone, then the sheriff's office may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code; (3) must withhold certain information under section 552.117(a)(2) of the Government Code; however, the cellular telephone number may only be withheld if the cellular telephone service is not paid for by the governmental body; (4) must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure; and (5) must release the remaining information. In Open Records Letter No. 2022-04453, we determined the county: (1) may withhold certain information pursuant to rule 503 of the Texas Rules of Evidence; (2) may generally withhold the remaining responsive information under section 552.107(1) of the Government Code; however, if the non-privileged e-mails we marked are maintained by the county separate and apart from the otherwise privileged e-mail strings in which they appear and stand alone, then the county may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code; (3) must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure; and (4) must release the remaining responsive information. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, the county must continue to rely on Open Records Letter Nos. 2022-01132 and 2022-04453 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments for the information which is not subject to the previous rulings.

Next, we note some of the remaining responsive information subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

[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[.]

Gov't Code § 552.022(a)(17). The information at issue includes court-filed documents, which are subject to section 552.022(a)(17) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* The county seeks to withhold the information subject to section 552.022 under section 552.107 of the Government Code. However, section 552.107 is discretionary in nature and does not make information confidential under the Act. *See 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).* Therefore, the county may not withhold the information subject to section 552.022 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, 336 (Tex. 2001). Accordingly, we will address the attorney-client privilege claims under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022. We will also consider the arguments for the information not subject to section 552.022.

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).

You state the responsive information subject to section 552.022 of the Government Code is attached to privileged communications between county attorneys, county officials, and county employees. You further state the information was communicated for the purpose of rendition of legal services to the county. In addition, you state these communications were intended to be, and have remained, confidential. Upon review, we find you have demonstrated the attachments at issue are part of privileged e-mail communications for purposes of rule 503 of the Texas Rules of Evidence. Thus, the county may withhold the responsive information subject to section 552.022(a)(17) of the Government Code pursuant to rule 503 of the Texas Rules of Evidence.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* 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. 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 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).

You assert the remaining responsive information constitutes communications between county attorneys, county officials, and county employees that were made for the purpose of providing legal advice to the county. In addition, you state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to some of the information at issue. Thus, with the exception of the information we have marked for release, the county may generally withhold the remaining responsive information under section 552.107(1) of the Government Code.<sup>2</sup> We note, however, the some of the remaining responsive information consists of e-mail strings including e-mails

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

and attachments received from or sent to parties you have not demonstrated to be privileged, including third parties regarding contract negotiations. Thus, the party's interests were adverse at the time the communications regarding contract negotiations were made. Furthermore, if the e-mails and attachments received from or sent to non-privileged parties are removed from the e-mail strings and stand alone, they are responsive to the request for information. Therefore, if these non-privileged e-mails and attachments, which we have marked, are maintained by the county separate and apart from the otherwise privileged e-mail strings in which they appear, then the county may not withhold these non-privileged e-mails and attachments under section 552.107(1) of the Government Code. In addition, we find the remaining responsive information at issue, which we have marked for release, was shared with parties you have not shown to be privileged, including third parties regarding contract negotiations. Thus, we conclude you have failed to establish the remaining responsive information constitutes privileged communications for the purposes of section 552.107(1), and the county may not withhold it on that basis.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You state some of the e-mails received from or sent to parties you have not demonstrated to be privileged, which you have marked, consist of advice, opinions, and recommendations of employees of the county. However, we find the information at issue consists of communications shared with third parties with whom you have not demonstrated the county shares a privity of interest or common deliberative process. Thus, you have failed to demonstrate the applicability of the deliberative process privilege of section 552.111 to the information at issue. Accordingly, the county may not withhold any portion of the information you have marked under section 552.111 on the basis of the deliberative process privilege.

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). *See* Gov’t Code § 552.137(a)-(c). Upon review, we find the e-mail address you seek to withhold in the information received from or sent to parties you have not demonstrated to be privileged is subject to section 552.137(c). Therefore, the county may not withhold information you have marked under section 552.137. *See id.* § 552.137(a).

In summary, the county must continue to rely on Open Records Letter Nos. 2022-01132 and 2022-04453 as previous determinations and withhold or release the identical information in accordance with those rulings. The county may withhold the responsive information subject to section 552.022(a)(17) of the Government Code pursuant to rule 503 of the Texas Rules of Evidence. With the exception of the information we have marked for release, the county may generally withhold the remaining responsive information under section 552.107(1) of the Government Code; however, if the non-privileged e-mails and attachments we have marked are maintained by the county separate and apart from the otherwise privileged e-mail strings in which they appear and stand alone, then the county may not withhold these non-privileged e-mails and attachments under section 552.107(1) of the Government Code. The county must release the remaining responsive information.

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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/mo

Ref: ID# 948488

Enc. Submitted documents

c: Requestor  
(w/o enclosures)