



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 28, 2022

Ms. Rachel Saucier  
Executive Assistant  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2022-36598

Dear Ms. Saucier:

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# 986673 (City PIR No. G018969-090122).

The City of Georgetown (the "city") received a request for certain information created, distributed, or held by the city's conservation services department. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.133 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The information we have marked consists of information in

an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body subject to section 552.022(a)(3). The information subject to section 552.022(a)(3) must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although you raise section 552.107 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information subject to section 552.022(a)(3) may be withheld 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 the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503. Additionally, as sections 552.101 and 552.133 of the Government Code can make information confidential under the Act, we will consider your arguments under these sections for the submitted information. Further, we will consider your argument under section 552.107 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. *See* ORD 676. 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 Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein). Upon review, we find you have failed to demonstrate the information at issue consists of privileged attorney-client communications for the purposes of Texas Rule of Evidence 503, and the city may not withhold any portion of the information at issue on that basis.

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* 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*, 922 S.W.2d at 923.

You state the information not subject to section 552.022 consists of communications involving city attorneys and employees. You assert the communications were made for the purpose of facilitating the rendition of professional legal services to the city and these communications have remained confidential. Upon review, we find the city has demonstrated the applicability of the attorney-client privilege to some of the information at issue. Therefore, the city may withhold the information we have marked under section 552.107(1) of the Government Code.<sup>1</sup> However, we note the remaining information at issue was shared with individuals whom you have not demonstrated to be privileged parties. Therefore, you have failed to establish the information at issue constitutes privileged attorney-client communications for the purposes of section 552.107(1). Accordingly, the city may not withhold any of the remaining information under section 552.107(1) of the Government Code.

Section 552.133 of the Government Code excepts from disclosure a public power utility's information that is "reasonably related to a competitive matter." Gov't Code § 552.133(b). Section 552.133 provides, in relevant part:

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

(a) In this section, “public power utility” means an entity providing electric or gas utility services that is subject to the provisions of this chapter.

(a-1) For purposes of this section, “competitive matter” means a utility-related matter that is related to the public power utility’s competitive activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors. The term:

(1) means a matter that is reasonably related to the following categories of information:

...

(F) customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies[.]

*Id.* § 552.133(a), (a-1)(1)(F). Section 552.133(a-1)(2) provides fifteen categories of information that are not competitive matters. *Id.* § 552.133(a-1)(2). You state the Georgetown Electric Utility is a municipally-owned utility governed by the city and, thus, subject to section 552.133. You state the remaining information contains “[t]he ‘usage in KWH for [e]lectric for each tenant and billing history.’” Thus, you assert such information is related to a “competitive matter” for purposes of section 552.133. Additionally, you state the information at issue is not among the fifteen categories of information expressly excluded from the definition of “competitive matter” by section 552.133(a-1)(2). Based on these representations and our review, we find some of the remaining information relates to competitive matters as defined by section 552.133(a-1). Therefore, the city must withhold the remaining electrical information under section 552.133 of the Government Code.<sup>2</sup> However, we find the remaining information at issue is not related to electric or gas services. Section 552.133 applies to electric or gas utility services only. *Id.* § 552.133(a). Thus, the remaining information is not subject to 552.133 and the city may not withhold it on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information made confidential by other statutes, such as section 182.052 of the Utilities Code, which provides, in relevant part:

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

(a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, unless the customer requests that the government-operated utility disclose keep the information confidential.

(b) A customer may request disclosure of information described by Subsection (a) by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(2) or any other written request for disclosure.

Util. Code § 182.052(a)-(b). "Personal information" under section 182.052(a) includes an individual's address, but does not include the individual's name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). Waste, wastewater, gas, garbage, electricity, and drainage services are included in the scope of utility services covered by section 182.052. *See* Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054.

We understand the city's water utility is a government-operated utility for purposes of section 182.052. *See id.* § 182.051(3). Although you assert the information at issue is confidential under section 182.052, you do not inform us, nor provide any documentation demonstrating, the customers whose information is at issue timely requested confidentiality of their personal information. Further, we note some of the information at issue may pertain to businesses or other artificial entities, which is not made confidential by section 182.052. Therefore, to the extent the customers whose information is at issue are natural persons who elected confidentiality prior to the date the city received the present request for information, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. To the extent the information we have indicated does not pertain to natural persons, or if the customers did not elect confidentiality for their information prior to the date the city received the present request for information, the city may not withhold the information at issue under section 552.101 in conjunction with section 182.052(a). In either case, we find the remaining information at issue does not constitute personal information of a customer or the volume or units of utility usage and the amounts billed to or collected for that utility usage. Therefore, the remaining information is not confidential under section 182.052, and the city may not withhold it under section 552.101 on that basis.

In summary, the city may withhold the information we have marked under section 552.107(1) of the Government Code. The city must withhold the remaining electrical information under section 552.133 of the Government Code. To the extent the customers whose information is at issue are natural persons who elected confidentiality prior to the date the city received the present request for information, the city must withhold the information we marked and indicated under section 552.101 of the Government Code in

conjunction with section 182.052(a) of the Utilities Code. The city must release the remaining 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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/jxd

Ref: ID# 986673

Enc. Submitted documents

c: Requestor  
(w/o enclosures)