



March 27, 2001

Ms. Leah Simon Clark
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2001-1210

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145302.

The City of Waco (the "city") received two similar requests for information. The first request seeks "information in 'an account, voucher, or contract relating to the expenditure of public funds or other funds by the [city]' used for the opposition to dairy farms." Specifically, the requestor seeks "[b]udgets, cost projections, audits, billing statements, time sheets, or any other documents relating to money expended by the [city], and projected to be expended by the City, to oppose individual dairy farms or associations of dairy farms located on the Bosque River watershed." The second request seeks "[a] summary of any expenses pertaining or related to water quality control actions as they relate to dairy farms in Erath County." You state that the city has released some of the responsive information to the requestors. However, you claim that portions of the responsive information are excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

We begin by noting that you have submitted documents that do not appear to be responsive to the present requests for information. The requestors seek information in an account, voucher, or contract relating to the expenditure of funds, as well as summaries of expenses. While you have submitted copies of checks, invoices, receipts, check requisitions, statements, orders, petty cash requests, and petty cash vouchers that are responsive to the

¹We assume that 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.

requests, you have also submitted memoranda and emails between the city and its attorney, notes from a conference with the city's attorney, and a report by a city consultant that are not responsive to the requests for information. We have marked the information that is not responsive and that we therefore do not address in this ruling.

Next, we note that all of the responsive information is made expressly public under section 552.022 of the Government Code. Section 552.022 states, in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under 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;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate.

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney client privilege.

The responsive information must be released unless it is confidential under other law or, in the case of the attorney fee bills, unless the information is protected by the attorney-client privilege. Section 552.103 of the Government Code, which excepts certain information related to litigation, and section 552.107 of the Government Code, which excepts information within the attorney-client privilege, are not "other law" for purposes of section 552.022. Open Records Decision No. 665 at 2 n.5 (2000) (explaining that section 552.103 is not a confidentiality provision); Open Records Decision No. 630 at 4 (1994) (governmental body may waive section 552.107(1)).

However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. Recently, the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001). Thus, we will determine whether any of the responsive information is confidential under Rule 503.

Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(D) among lawyers and their representatives representing the same client.

A communication is "confidential" if 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. Tex. R. Evid. 503(a)(5).

Accordingly, in order to withhold 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. Upon a demonstration of all three factors, the document containing privileged information is 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ). The only responsive information that appears to have been exchanged between the city and its attorneys are the attorney fee bills and the checks issued in response thereto. None of the remaining information appears to have been exchanged between privileged parties; therefore, you have not demonstrated that this information is protected under the attorney-client privilege. Furthermore, the checks issued to the city's attorneys are not privileged information because they simply reflect the fees paid for legal services and the method of payment. See *Borden, Inc. v. Valdez*, 773 S.W.2d 718, 720-21 (Tex. App.—Corpus

Christi 1989, orig. proceeding); *Duval County Ranch Co. v. Alamo Lumber Co.*, 663 S.W.2d 627, 634 (Tex. App.--Amarillo 1983, writ ref'd n.r.e.); *Jim Walters Homes, Inc. v. Foster*, 593 S.W.2d 749, 752 (Tex. Civ. App.--Eastland 1979, no writ). Finally, with respect to the attorney fee invoices, you have submitted both unredacted and redacted versions of the invoices submitted by the city's outside attorneys to the city. Where a document contains confidential attorney-client communications, the privilege attaches to the entire document, not just to specific portions relating to legal advice, opinions or mental analysis. *See Pittsburgh Corning*, 861 S.W.2d at 425.² However, if the city chooses to waive the privilege, it need not withhold the entire document. *See* Tex. R. Evid. 511(1) (holder of a privilege under the Rules of Evidence waives the privilege if the person "voluntarily discloses or consents to the disclosure any significant part of the privileged matter"). Based on your markings and the information you have provided, it appears that the city seeks to withhold only the redacted portions of the submitted invoices and has consented to the disclosure of the remainder of the invoices. *See id.* After reviewing the submitted information, we agree that the redacted portions of the attorney invoices are privileged under Rule 503 of the Rules of Evidence. Therefore, you may withhold the redacted portions of the attorney fee invoices. However, you must release the remainder of the responsive information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

²We have no information to establish the applicability of an exception to the attorney-client privilege in this case. *See* Tex. R. Evid. 503(d).

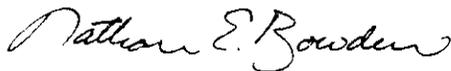
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145302

Encl: Submitted documents

cc: Ms. Susan E. Potts
Potts & Reilly, L.L.P.
Attorneys and Counselors
401 West 15th Street, Suite 850
Austin, Texas 78701-1665
(w/o enclosures)

Mr. Robert Johnson
919 North Valley Mills Drive, Suite 1000
Waco, Texas 76710
(w/o enclosures)