



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2005

Mr. Ronald D. Stutes
Potter Minton
110 North College, Suite 500
Tyler, Texas 75702

OR2005-03983

Dear Mr. Stutes:

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# 223735.

The Pritchett Water Supply Corporation ("PWSC"), which you represent, received a request for certain company policy changes; lists of certain employees; a list of certain managers; payments made to employees other than for compensation for hours actually worked; invoices reflecting attorney fees for certain years; and a list of all employees who left the company in 2004. You inform us that some information has been released but claim that other requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. You also inform us that the request seeks the production of certain lists of employees that PWSC does not possess. However, if PWSC possesses responsive information in non-list format, this information must be produced as part of PWSC's good faith duty to relate the request to information PWSC has. Open Records Decision Nos. 304 (1982), 87 (1975), 23 (1974). We have considered the exceptions you claim and reviewed the submitted information.

Attorney fee bills are subject to section 552.022(a) of the Government Code, which provides in pertinent part as follows:

- (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:

....

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

Gov't Code § 552.022(a)(16). Under section 552.022, fee bills must be released unless they are expressly confidential under other law. You claim that the submitted information is excepted from required disclosure under sections 552.103 and 552.107 of the Government Code. Sections 552.103 and 552.107 are discretionary exceptions under the Public Information Act and do not constitute "other law" for purposes of section 552.022. *See* 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. 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*, 53 S.W.3d 328, 337 (Tex. 2001). Thus, we will determine whether the 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
- (E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). 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. *See* Tex. R. Evid. 503(a)(5).

Accordingly, in order to withhold attorney-client privileged 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.–Houston [14th Dist.] 1993, no writ); *see also* Tex. R. Evid. 511 (waiver of privilege by voluntary disclosure).

You state that the requestor has been provided with the invoices that show the amounts that were charged for attorney services for the years requested. However, you state that the itemized lists of tasks performed for PWSC that are attached to the fee bills contain detailed information that is “provided in confidence to the client, and often reflects the substance of confidential communication by PWSC to its attorney.” After reviewing your arguments and the attorney fee bills submitted to this office, we conclude that you have demonstrated that the attorney fee bills contain certain entries that are privileged communications made for the purpose of facilitating the rendition of professional legal services to the client. Therefore, the portions of the fee bills we have marked may be withheld under Rule 503. Rule 503 is inapplicable to the remaining unmarked entries, as the entries do not reflect communications and PWSC has not met its burden under the second prong of Rule 503 of identifying the parties involved in the communications. Therefore, the unmarked entries must be released.

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

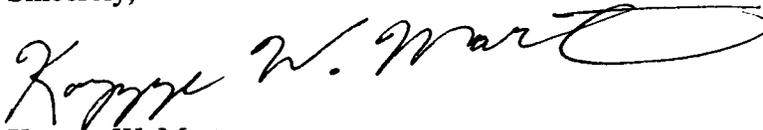
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kazzye W. Martens
Assistant Attorney General
Open Records Division

KWM/seg

Ref: ID# 223735

Enc. Submitted documents

c: Mr. Joe Glenn
633 Holly Road
Gilmer, Texas 75644
(w/o enclosures)