



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2005

Mr. Robert C. Wendland
Rapier, Wilson & Wendland, P.C.
103 W. McDermott
Allen, Texas 75013-2782

OR2005-10685

Dear Mr. Wendland:

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# 237052.

The Town of Northlake (the "town"), which you represent, received a request for "all invoices for legal services to the [town] from June 2002 through August 2005[,]" as well as the payments made against those invoices. You state that you have released some of the requested information, but claim that portions of the submitted attorney fee bills are excepted from disclosure under sections 552.101 and 552.107 of the Government Code, as well as rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the present request was made by the town's mayor. The purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body does not act as a member of the public in doing so. Thus, exceptions to public disclosure under the Act do not control the right of access of an official of a governmental body to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district); *see also* Gov't Code §§ 552.201 (chief administrative officer of governmental body is officer for public information for governmental body), .204 (officer for public information is responsible for release of public information as required by Act). Although the requestor states that he is the town's mayor, neither he nor the town has informed this office that he is requesting the

submitted information in his official capacity. Accordingly, we are forced to rule conditionally on this matter. Therefore, in the event the requestor is acting in his official capacity, we find the present request is not a request by a member of the public under the Act and we determine that the town may not withhold the requested information from the mayor pursuant to the Act's exceptions to required public disclosure. *See* Attorney General Opinion JM-119 (1983). In the event, however, the requestor is making the present request in his personal capacity as a member of the public, we will address your claimed exceptions.

Next, we note, and you acknowledge, that the submitted attorney fee bills are subject to section 552.022 of the Government Code, which provides that

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). Therefore, the submitted attorney fee bills must be released under section 552.022(a)(16) unless they are confidential under "other law." Because section 552.101 of the Government Code does constitute "other law" for purposes of section 552.022, we will address the town's claim regarding this exception. However, section 552.107 of the Government Code is not "other law" for purposes of section 552.022 because it is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 662 at 2 (discretionary exceptions generally). We note, however, that the attorney-client privilege is also found in rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held that the Texas Rules of Evidence, along with the Texas Rules of Civil Procedure, are "other law" for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure for the submitted attorney fee bills.

Rule 503(b)(1) of the Texas Rules of Evidence enacts the attorney-client privilege and provides as follows:

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. *Id.* 503(a)(5). Thus, 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 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, no writ).

You assert that the submitted attorney fee bills contain privileged communications, which you have marked, from the town's attorney to various town employees made in the furtherance of the rendition of professional legal services. Furthermore, you assert that these communications were intended to be confidential and their confidentiality has been maintained. Based on your representations and our review, we find that the information you have marked in the submitted attorney fee bills is protected by the attorney-client privilege. Therefore, if the requestor is making the present request in his private capacity as a member of the public, the town may withhold the information you have marked pursuant to rule 503 of the Texas Rules of Evidence. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 Office of the Attorney General 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 237052

Enc. Submitted documents

c: Mr. Michael Savoie
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(w/o enclosures)