



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2006

Mr. Duke Meek
President
Kinney County Groundwater Conservation District
P.O. Box 369
Brackettville, Texas 78832

OR2006-15122

Dear Mr. Meek:

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# 266911.

The Kinney County Groundwater Conservation District (the "district") received a request for eleven categories of information pertaining to the district, including audit and attorney fee-bill information. You indicate that some of the requested information has been made available to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.116 of the Government Code. We have considered your arguments and reviewed the representative sample of information submitted by the district and the district's attorney.¹ We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

An attorney for the requestor, Grass Valley Water, L.P. ("GVW"), asserts that the district failed to comply with section 552.301 of the Government Code, which prescribes 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.

procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving a written request for information. The district states that it received the request for information through first-class mail on September 27, 2006. GVW does not dispute that the district received the request by first-class mail on this date; however, it argues that it also sent the request by facsimile transmission on September 22, 2006. In response to a request for information made by this office to the district pursuant to section 552.303 of the Government Code, the district informs us that "September 22, 2006 was on a Friday which is not a normal business day for the District" and that "Wednesday, September 27, 2006 was the next normal day of operation after the fax was sent." Based on the district's representation that it was not open for business from September 22 to September 26 of 2006, we conclude that the district received the request for information on September 27, 2006. The district requested a ruling from this office and submitted responsive documents on October 9, 2006, and the district's attorney also submitted responsive information on October 11, 2006. Accordingly, we conclude that the district complied with the procedural requirements of section 552.301.

We next note that the submitted attorney fee bills are subject to section 552.022 of the Government Code. Under section 552.022(a)(16), information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege is expressly public unless it is expressly confidential under other law. Gov't Code § 552.022(a)(16). Sections 552.103 and 552.107 of the Government Code are discretionary exceptions that protect a governmental body's interests and may be waived. As such, they are not other law that make information confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107 may be waived), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Therefore, the submitted information may not be withheld on the basis of section 552.103 or 552.107. But the Texas Supreme Court has held that the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022 of the Government Code. *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.

Rule 503(b)(1) provides the following:

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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 4527 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information). Having considered your representations and reviewed the information at issue, we find the district has established that the information highlighted in yellow constitutes privileged attorney-client communications that the district may withhold under rule 503.

The district asserts that some of the submitted information is excepted under section 552.116 of the Government Code. Section 552.116(a) which provides as follows:

An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

Gov't Code § 552.116(a). This section only excepts the audit working papers of certain types of entities. The district is not one of these entities; therefore, section 552.116 is inapplicable to the district and the district may not withhold any of the submitted information on that ground.

To conclude, the district may withhold the yellow-highlighted information under Texas Rule of Evidence 503. The district must release the remaining information to the requestor.

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).

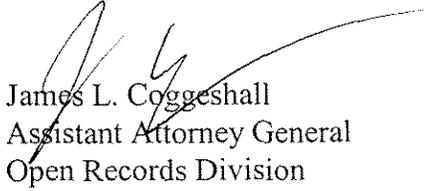
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jww

Ref: ID# 266911

Enc. Submitted documents

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