



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2009

Mr. Christopher S. Jackson
Perdue, Brandon, Fielder, Collins, & Mott, L.L.P.
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Attorneys for Grayson Central Appraisal District
3333 Lee Parkway, 10th Floor
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OR2009-06975

Dear Mr. Jackson and Mr. Tabor:

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# 343797.

The Grayson Central Appraisal District (the "district"), which you both represent, received a request for six categories of information, including documents related to legal services provided to the district. You both state you have released some information to the requestor. You inform this office that you do not maintain attorneys' fee bills from February 2009 through March 2009.¹ You claim that portions of the submitted information are excepted from disclosure under section 552.136 and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.² We have also

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²We 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.

received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why requested information should or should not be released).

Initially, we note that some of the responsive information has been previously ruled upon by this office in Open Records Letter No. 2008-16977 (2008). In that ruling, we concluded that the district may withhold marked portions of attorneys' fee bills under Texas Rule of Evidence 503. As we have no indication that the law, facts, and circumstances surrounding this prior ruling have changed, you may continue to rely on Open Records Letter No. 2008-16977 as a previous determination and withhold the responsive information in this request that was previously ruled on in accordance with this prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments regarding the information that was not the subject of the ruling in Open Records Letter No. 2008-16977.

You seek to withhold portions of the submitted fee bills from July 2008 through January 2009 under Texas Rule of Evidence 503. We note, and you acknowledge, that these bills are subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides that information in a bill for attorney fees that is not protected under the attorney-client privilege is not excepted from required disclosure unless it is expressly confidential under other law; therefore, information within these fee bills may only be withheld if it is confidential under other law. Gov't Code § 552.022(a)(16). The Texas Supreme Court has held that 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). We will therefore consider your arguments under Texas Rule of Evidence 503.

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and 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;
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(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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

In this instance, you have marked information in the fee bills at issue that you claim consists of confidential attorney-client communications that were made in furtherance of the rendition of professional legal services to the district. You have identified each party to the communications. You state that these communications have remained confidential and have not been revealed to any third party. Based on your representations and our review of the submitted information, we agree that some of the information you have marked reveals confidential communications made between privileged parties. Accordingly, the information we have marked is protected by the attorney-client privilege and may therefore be withheld pursuant to rule 503 of the Texas Rules of Evidence. However, portions of the remaining information you have marked under rule 503 consist of communications with outside parties or opposing counsel, and you have failed to establish how these individuals constitute privileged parties for purposes of rule 503. We also note that some of remaining information you have marked under rule 503 does not document a communication. Accordingly, we find that you have failed to establish how the remaining information you wish to withhold under rule 503 constitutes privileged attorney-client communications. Therefore, none of the remaining information may be withheld under rule 503 of the Texas Rules of Evidence.

You seek to withhold the information you have marked under section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding any other provision of this

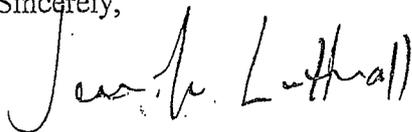
chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Upon review, we find the bank account and bank routing number we have marked constitute access device numbers for purposes of section 552.136. Thus, this information must be withheld under section 552.136 of the Government Code. You have failed to demonstrate, however, how the check number you have marked constitutes an access device number. Accordingly, this information may not be withheld under section 552.136 of the Government Code.

In summary, the district may continue to rely on Open Records Letter No. 2008-16977 with regard to the attorneys’ fee bills at issue in that ruling. The district may withhold the information we have marked under Texas Rule of Evidence 503. The district must withhold the information we have marked under section 552.136. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 343797

Enc. Submitted documents

c: Requestor
(w/o enclosures)