



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 25, 2009

Mr. Matthew C. G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2009-08790

Dear Mr. Boyle:

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# 347283.

The City of Colleyville (the "city"), which you represent, received two requests for information related to an investigation of the Colleyville Police Department. You state that the city will release some responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You note, and our review confirms, that some of the submitted information, which we have marked, was the subject of previous requests received by the city, as a result of which this office issued Open Records Letter Nos. 2009-03356 (2009) and 2009-06561 (2009). In those rulings, we concluded that the city must withhold the information we marked under section 552.130 of the Government Code and section 552.101 of the Government Code in conjunction with common-law privacy. You do not indicate that there has been any change in the law, facts, or circumstances on which the previous rulings were based. We therefore conclude that the city must treat the marked information in accordance with Open Records Letter Nos. 2009-03356 and 2009-06561. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

The remaining information at issue consists of attorney fee bills and an invoice for sexual harassment prevention training. The invoice is subject to section 552.022(a)(3) of the Government Code, which provides:

[T]he 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[.]

Gov't Code § 552.022(a)(3). Accordingly, the city may withhold this invoice only if it is "expressly confidential under other law." You have not specifically claimed any exceptions to disclosure for this document, nor are we aware of any law that would make this document expressly confidential. Thus, the city must release the submitted sexual harassment prevention training invoice pursuant to section 552.022(a)(3).

We understand you to claim that the attorney fee bills are excepted from disclosure under section 552.107 of the Government Code. However, section 552.022(a)(16) of the Government Code provides that information in a bill for attorney's fees must be released unless it is privileged under the attorney-client privilege or is expressly confidential under other law. *See id.* § 552.022(a)(16). Section 552.107 is a discretionary exception that protects the governmental body's interests and which may be waived; as such, this section does not make information expressly confidential. *See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally).* Therefore, the city may not withhold the submitted attorney fee bills under section 552.107. However, the Texas Supreme Court has held that the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider whether portions of the submitted attorney fee bills are privileged under the attorney-client privilege of Texas Rule of Evidence 503.

Rule 503 enacts the attorney-client privilege, providing in relevant part:

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 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).

We understand you to claim that the submitted fee bills are confidential in their entirety under Texas Rule of Evidence 503. However, section 552.022(a)(16) of the Government Code provides that information "that is *in* a bill for attorney's fees" is not excepted from required disclosure unless it is confidential under other law or privileged under the attorney-client privilege. *See Gov't Code* § 552.022(a)(16) (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. *See Open Records Decision Nos. 676 (2002) (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney's legal advice).* This office has found that only information that is specifically demonstrated to be protected by the attorney-client privilege or made confidential by other law may be withheld from fee bills. *See ORD No. 676.*

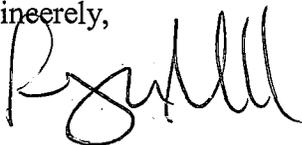
You do not state that the submitted fee bills consist of confidential attorney-client communications that were made in furtherance of the rendition of professional legal services to the city. You also do not state that these communications have remained confidential and have not been revealed to any third party. Furthermore, you have not identified any of the parties to these communications. *See ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has*

been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in rule 503); *see generally* Open Records Decision No. 150 (1977) (predecessor to Act places burden on governmental body to establish why and how exception applies to requested information); *Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). Accordingly, you have failed to establish that any of the information at issue consists of confidential attorney-client communications. We therefore conclude that the city may not withhold any of the information at issue under the attorney-client privilege of rule 503. As you raise no further exceptions with regard to the fee bills and invoice at issue, the city must release this information.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 347283

Enc. Submitted documents

cc: Requestors
(w/o enclosures)

c: BILLY R. MCCULLOUGH
4011 QUAIL RIDGE COURT
GRANBURY, TEXAS 76049
(w/o enclosures)