



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Ms. Marivi Gambini
City of Irving
825 W. Irving Boulevard
Irving, Texas 75060

OR2009-17175

Dear Ms. Gambini:

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# 363090.

The City of Irving (the "city") received a request for invoices, billing statements, and payment records regarding attorneys' fees and related expenses billed or charged to the city by two specified law firms in connection with three specified lawsuits. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503. We also received comments from the requestor. *See* Gov't Code § 552.304 (providing an interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note most of the submitted information is subject to section 552.022 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:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

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

Id. § 552.022(a)(3), (16). The submitted information includes payment vouchers and invoices relating to the expenditure of public funds by the city that are subject to subsection 552.022(a)(3) of the Government Code, as well as attorney fee bills subject to subsection 552.022(a)(16) of the Government Code. The city must release this information pursuant to subsections 552.022(a)(3) and 552.022(a)(16) unless it is expressly confidential under "other law." You assert this information is excepted under sections 552.103 and 552.107 of the Government Code and protected under Texas Rule of Evidence 503. Sections 552.103 and 552.107 are discretionary exceptions to disclosure that protect governmental bodies' interests and therefore may be waived. *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 No. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the city may not withhold the submitted vouchers, receipts, or fee bills under section 552.103 or 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). We will therefore consider your argument under Rule 503 of the Texas Rules of Evidence for the information subject to section 552.022. We additionally note some of the information subject to subsection 552.022(a)(3) contains bank routing and account numbers subject to section 552.136 of the Government Code.¹ Because this section is "other law" for purposes of section 552.022, we will consider section 552.136 after addressing the applicability of Rule 503.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) 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:

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (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). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7.

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 your brief to this office, you identify a number of city employees and attorneys as privileged parties. The submitted fee bills additionally identify several attorneys and employees with the city's outside counsel as privileged. We marked the portions of the submitted fee bills that reflect communications between and among these privileged parties. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the city. You also state these communications were intended to be confidential and that their confidentiality has been maintained. Based on your representations and our review, we conclude the information we marked may be withheld

under Texas Rule of Evidence 503. Although the fee bills identify some of the remaining individuals as having opposing interests to the city, you do not inform this office of the nature of the city's relationship with any of the remaining individuals listed in the fee bills. Accordingly, you failed to provide this office with the necessary facts to demonstrate the elements of the attorney-client privilege with respect to the remaining communications in the submitted attorney fee bills. *See* ORD 676 at 6-7. You also do not explain how the submitted payment vouchers and invoices contain any privileged attorney-client information. *Id.* Thus, we conclude the attorney-client privilege is inapplicable to the remaining information subject to section 552.022, and this information may not be withheld under Rule 503.

Some of the submitted payment vouchers contain bank account and routing numbers. 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(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to ... obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we conclude the bank account number and routing number we marked in the submitted vouchers are access device numbers that must be withheld under section 552.136.

We next turn to your argument under section 552.107 of the Government Code for the information not subject to section 552.022. Section 552.107 protects information coming within the attorney-client privilege. The test for determining whether information is protected under the attorney-client privilege under section 552.107 is the same as that discussed above under Texas Rule of Evidence 503. First, a governmental body must demonstrate that the information constitutes or documents a communication. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. Lastly, the attorney-client privilege applies only to a *confidential* communication, meaning it was "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." ORD 676. The remaining documents at issue consist of memoranda sent between city employees and attorneys authorizing payments for legal services performed by the city's outside counsel. You state these memoranda were communicated for the purpose of facilitating the rendition of professional legal services to the city. You also state these communications were intended to be confidential and that their confidentiality has been maintained. Based on your representations and our review, we conclude these memoranda,

which we marked, are privileged and may be withheld under section 552.107. As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, the city may withhold the portions of the submitted attorney fee bills we marked under Texas Rule of Evidence 503. The city must withhold the bank routing and account numbers we marked under section 552.136 of the Government Code. The remaining information in the vouchers, invoices, and attorney fee bills must be released. The city may withhold the memoranda we marked under section 552.107 of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 363090

Enc. Submitted documents

cc: Requestor
(w/o enclosures)