



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2009

Mr. George E. Hyde  
Denton, Navarro, Roach & Bernal  
Attorney for City of Live Oak  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-17343

Dear Mr. Hyde:

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# 363631.

The City of Live Oak (the "city"), which you represent, received a request for information related to the legal fees for two specified cases. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides in part that:

(a) 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[.]

Gov't Code § 552.022(a)(3), (16). In this instance, the submitted information includes information in an account, voucher, or contract relating to the expenditure of public funds by the city and attorney fee bills. Thus, 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 that this information is excepted under sections 552.103, 552.107, and 552.136 of the Government Code. However, sections 552.103 and 552.107 are discretionary exceptions to disclosure that protect the governmental body's interests and 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); 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the city may not withhold the submitted information, which is subject to section 552.022, under section 552.103 or section 552.107 of the Government Code. However, 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 attorney-client privilege argument under Texas Rule of Evidence 503 for the information that is subject to section 552.022. In addition, because section 552.136 of the Government Code constitutes other law for the purposes of section 552.022, we will consider your arguments under that section.

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:

- (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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state that the information you seek to withhold in the submitted attorney fee bills documents communications between the city and its legal counsel made for the purpose of facilitating the rendition of professional legal services to the city. You indicate that these communications were not intended to be disclosed and that they have remained confidential. Based on your representations and our review, we conclude that some of the information is protected by the attorney-client privilege, and the city may withhold the information we have marked under Texas Rule of Evidence 503. However, you failed to establish that some of the remaining information you have marked under rule 503 documents communications between privileged parties. Additionally, some of the entries you have marked indicate information was prepared but do not indicate that it was communicated to privileged parties. Accordingly, you have failed to establish that the remaining information you have marked constitutes privileged attorney-client information. Therefore, we conclude that Texas Rule of Evidence 503 is not applicable to the remaining information you have marked and it may not be withheld on this basis.

Section 552.136 of the Government Code states “[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). Accordingly, the city must withhold the account and routing numbers you have marked under section 552.136 of the Government Code.

In summary, the city may withhold the information we have marked under Texas Rule of Evidence 503. The city must withhold the account and routing numbers you have marked under section 552.136 of the Government Code. 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/rl

Ref: ID# 363631

Enc. Submitted documents

c: Requestor  
(w/o enclosures)