



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2010

Mr. Douglas L. Hibbard  
Bracewell & Giuliani, L.L.P.  
711 Louisiana Street, Suite 2300  
Houston, Texas 77002-2770

OR2010-00514

Dear Mr. Hibbard:

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# 366706.

The Magnolia Volunteer Fire Department (the "department"), which you represent, received a request for itemized fee bills for legal services to the department from June 1, 2009 to September 30, 2009. You claim that portions of the submitted information are excepted from disclosure under section 552.136 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

The submitted information consists of attorney fee bills subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege," unless the information is expressly 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" 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 attorney-client privilege argument under Texas Rule of Evidence 503. In addition, because

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<sup>1</sup>Although you also claim the submitted information is privileged under Texas Rule of Civil Procedure 192.5, you make no arguments to support this claim. Therefore, we assume you have withdrawn your claim that rule 192.5 applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

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(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, 457 (Tex. App.—Houston

[14th Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information).

You assert the submitted attorney fee bills contain communications between the department's outside counsel and department representatives. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the department. Further, you state that the submitted fee bills were intended to be, and have remained, confidential. Upon review of the submitted arguments and the information at issue, we find you have established that most of the information you have marked constitutes privileged attorney-client communications. Accordingly, the department may withhold the information you have marked, except as we have marked for release, under rule 503. The information we have marked for release, however, does not consist of or reveal confidential attorney-client communications. Further, some of the information marked for release contains communications to individuals whom you have not identified as department clients, client representatives, attorneys, or attorney representatives. Thus, the department has failed to demonstrate how any of the information we have marked for release constitutes confidential communications between privileged parties made for the purpose of facilitating the rendition of professional legal services. Therefore, we conclude that Texas Rule of Evidence 503 is not applicable to the information we have marked for release and it may not be withheld on this basis.

Section 552.136 of the Government Code 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."<sup>2</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We agree the marked bank account and wire transfer numbers are access device numbers for the purposes of section 552.136. Accordingly, the department must withhold the bank account and wire transfer numbers you have marked under section 552.136 of the Government Code.

In summary, with the exception of the information we have marked for release, the department may withhold the information you have marked under Texas Rule of Evidence 503. The department must withhold the information you have marked under section 552.136 of the Government Code. The remaining information must be released.

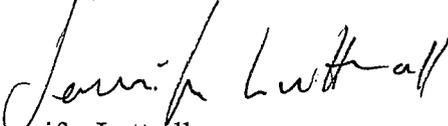
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 366706

Enc. Submitted documents

c: Requestor  
(w/o enclosures)