



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2010

Mr. Gary Henrichson
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2010-01891

Dear Mr. Henrichson:

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# 369512 (PIR W001585-111109).

The City of McAllen (the "city") received a request for information relating to an investigation involving the city's civil service commission and a named private attorney. You state that some of the requested information has been released. You claim that other responsive information is excepted from disclosure under section 552.136 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the information you submitted.

We first note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides for required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). 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

¹Although you also cite to section 552.103 of the Government Code, you have submitted no arguments in support of your assertion of that exception. Accordingly, this decision does not address section 552.103. See Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exception applies to information at issue).

attorney-client privilege,” unless the information is expressly confidential under other law. *Id.* § 552.022(a)(16). Thus, the submitted information, which consists of a voucher and attorney fee bills, is subject to section 552.022(a)(3) and (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). The attorney-client privilege is found at Texas Rule of Evidence 503. Accordingly, we will address your assertion of the attorney-client privilege under rule 503. We also will address your claim under section 552.136 of the Government Code, which is a confidentiality provision for the purposes of section 552.022(a)(3) and (16).

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

You state that the submitted voucher and attorney fee bills document communications between an attorney for and representatives of the city. You have provided documentation that identifies some of the individuals whose names appear in the submitted information. You have marked portions of the submitted information that the city seeks to withhold on the basis of the attorney-client privilege. You do not indicate that the privilege against disclosure of that information has been waived. Based on your representations and our review of the information at issue, we conclude that the information we have marked is encompassed by the attorney-client privilege under Texas Rule of Evidence 503 and may be withheld on that basis. We find that you have not demonstrated that any of the remaining information at issue is protected by the attorney-client privilege; therefore, we conclude that the city may not withhold any of the remaining information under rule 503.

You also claim section 552.136 of the Government Code, which provides as follows:

(a) In this section, “access device” means 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:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of [the Act], 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. You contend that section 552.136 is applicable to the city’s account number with the law firm that created the submitted attorney fee bills. You have not demonstrated, however, that the information in question can “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) (defining “access device”); *see id.* § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exception applies to information at issue). We therefore conclude that

the city may not withhold the account number 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 rest of the submitted 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, prominent initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 369512

Enc: Submitted documents

c: Requestor
(w/o enclosures)