



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 25, 2010

Mr. Mike Willatt  
Willatt & Flickinger  
Counsel to Lakeway Municipal Utility District  
2001 North Lamar  
Austin, Texas 78705

OR2010-04261

Dear Mr. Willatt:

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# 373489.

The Lakeway Municipal Utility District (the "district"), which you represent, received two requests from different requestors for certain attorney fee bills of the district created over a specified period of time. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestors and another interested party. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, we address the interested party's contention that the district has voluntarily made the information at issue available to one of the district's directors. Section 552.007 of the Government Code gives a governmental body the discretion to voluntarily release public information that is not confidential by law. *See id.* § 552.007(a). Section 552.007 requires that any such information a governmental body publicly discloses be made available to any

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<sup>1</sup>Although you also raise section 552.103 of the Government Code, you have not submitted any arguments under this exception. Consequently, we do not address it. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments explaining why stated exceptions apply no later than 15 days after receipt of written request).

member of the public. *See* Gov't Code § 552.007(b). The interested party asserts the district released the requested information by providing it to one of the district's directors. As a general rule, we agree that if a governmental body releases information to one member of the public, the Act's exceptions to disclosure are waived unless the information is otherwise confidential by law. *See id.* § 552.007; *see also* Attorney General Opinion JM-400 (1983); Open Records Decision No. 650 (1996) (once disclosure to public has occurred information in question must be made available to any person). However it appears the information at issue was not released to this individual as a member of the public, but in his official capacity as a director of the district. *See generally* Attorney General Opinion JM-119 (1983) (discussing distinction between "official capacity" and "member of public" in open records process). Because such a transfer of information does not amount to a public disclosure that triggers the section 552.007(b) selective disclosure prohibition, the district is not prevented from claiming an exception under the Act to the public disclosure of the information.

The submitted information consists of attorney fee bills, which are subject to section 552.022 of the Government Code. 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* Gov't Code § 552.022(a)(16). You raise section 552.107 of the Government Code, but this exception is discretionary, may be waived by a governmental body, and is not "other law" for section 552.022 purposes. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold any of the submitted information under section 552.107 of the Government Code. 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 your claim that the submitted information is privileged under Texas Rule of Evidence 503.

Texas Rule of Evidence 503 provides 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).

You claim the submitted fee bills are confidential in their entirety under rule 503. However, section 552.022(a)(16) of the Government Code provides 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* (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 assert the submitted information reveals confidential communications between district representatives and attorneys for the district. You represent these communications were made for the purpose of facilitating the rendition of professional legal services to the district. You further represent these communications were not intended to be disclosed to third parties. Upon review, we conclude the district may withhold portions of the information at issue, which we have marked, on the basis of the attorney-client privilege under Texas Rule of Evidence 503. However, the remaining information either does not consist of communications made for the purpose of facilitating the rendition of legal services, or consists of communications between individuals whose capacities and relationships you have

not described. *See* ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication 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) (stating that predecessor to the 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). Thus, you have not demonstrated how any of the remaining information constitutes privileged attorney-client communications. Accordingly, the district may not withhold any of the remaining information under rule 503. As you raise no other arguments against disclosure, the district must release the remaining information in the attorney fee bills to the requestors.

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,



Christopher Sterner  
Assistant Attorney General  
Open Records Division

CDSA/rl

Ref: ID# 373489

Enc. Submitted documents

c: Requestor  
(w/o enclosures)