



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2010

Mr. Coby L. Wilbanks
Karczewski Bradshaw L.L.P.
Attorneys for Chireno Independent School District
315 North Church Street
Nacogdoches, Texas 75961

OR2010-11051

Dear Mr. Wilbanks:

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# 387708.

The Chireno Independent School District (the "district"), which you represent, received a request for all lawyer fees charged to the district for work done regarding a specified matter.¹ You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.² We have considered the arguments you claim and reviewed the submitted information.

Initially, you indicate that the information you have marked is not responsive to the request because it does not pertain to the matter specified by the requestor. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request. Accordingly, we will address your arguments only with regard to the responsive information.

¹You have communicated to us that the district interpreted the portion of the request for "all fees paid or billed for other work by attorneys" to only refer to fees paid or billed in reference to the specified matter.

²Although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

We note the submitted information consists of attorney fee bills. As you acknowledge, attorney fee bills are subject to section 552.022(a)(16) of the Government Code, which 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). Although you assert that information contained in the submitted fee bills is excepted from disclosure by section 552.103 of the Government Code, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit vs. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas, 1999, no pet.); Open Records Decision No. 665 at 2 n.5 (2000). Accordingly, the district may not withhold information contained in the submitted fee bills under section 552.103. However, rule 503 of the Texas Rules of Evidence does constitute "other law" for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001) (Texas Rules of Evidence are "other law" within the meaning of section 552.022). Therefore, we will determine whether the district may withhold any of the information in the attorney fee bills under Texas Rule of Evidence 503.

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides:

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).

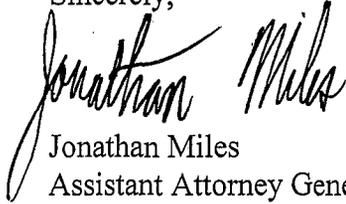
You claim that the fee bills in their entirety are confidential under Texas Rule of Evidence 503. However, section 552.022(a)(16) of the Government Code provides that information “that is *in* a bill for attorney’s fees” is not excepted from required disclosure unless it is confidential under other law 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 (2002) (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 state that the submitted attorney fee bills contain confidential communications between attorneys for the district and representatives of the district made for the purpose of facilitating the rendition of professional legal services to the district. Based on your representations and our review of the information at issue, we agree that the attorney fee bills contain information that reveals confidential communications between privileged parties. Accordingly, we have marked the information that is protected by the attorney-client privilege and may, therefore, be withheld pursuant to rule 503 of the Texas Rules of Evidence. The remaining information, however, does not consist of or reveal confidential attorney-client communications. Thus, you have failed to demonstrate that any of the remaining information documents privileged attorney-client communications. Accordingly, none of the remaining information may be withheld under Texas Rule of Evidence 503. As you raise no further arguments against disclosure, 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, 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 cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 387708

Enc. Submitted documents

c: Requestor
(w/o enclosures)