ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2010

Ms. LeAnne Lundy
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2010-13548

Dear Ms. Lundy:

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# 392761.

The Friendswood Independent School District (the "district"), which you represent, received a request for all invoices received or paid by the district to Feldman & Rogers or other attorneys for services rendered in a specified lawsuit. You state you have released some of the requested information. You claim portions of the submitted information are privileged under rule 503 of the Texas Rules of Evidence.[1] We have considered your argument and reviewed the submitted representative sample of information.[2]

We note the submitted information consists of attorney fee bills. 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). You assert the information you have marked in the submitted attorney fee bills is privileged under the

[1]Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

[2]We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decisions Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

attorney-client privilege found in rule 503 of the Texas Rules of Evidence. Accordingly, we will address your attorney-client privilege claim for the submitted information.

Texas Rule of Evidence 503 enacts the attorney-client privilege and provides in 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 attorney-client privileged information 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).

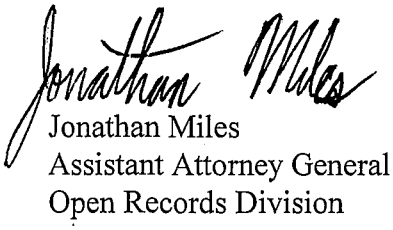
You assert the marked information in the submitted fee bills consists of privileged attorney-client communications between district personnel and the outside counsel for the district

made for the purpose of facilitating the rendition of professional legal services to the district. You further assert the communications at issue were not intended to be disclosed to third parties, and confidentiality has been maintained. Based on your representations and our review of the information at issue, we find you have established that the information we have marked is protected by the attorney-client privilege and may be withheld pursuant to rule 503. However, you have not shown how the remaining information at issues consists of communications between district personnel and the district's outside counsel. Further, some of the remaining information at issue documents communications to individuals whom you have not identified as clients, client representatives, lawyers, or lawyer representatives. Thus, you have failed to demonstrate that any of the remaining information at issue documents privileged attorney-client communications. Accordingly, the district may not withhold the remaining information at issue pursuant to rule 503 of the Texas Rules of Evidence. As you do not assert any other arguments against disclosure, the remaining information must be released to the requestor.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 392761

Enc. Submitted documents

c: Requestor
(w/o enclosures)