



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2010

Ms. Julia Gannaway  
Lynn, Pham & Ross, L.L.P.  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2010-14385

Dear Ms. Gannaway:

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# 394304.

The City of La Marque (the "city"), which you represent, received a request for itemized bills relating to legal services, private investigative services, or fact finder services received by the city since January 1, 2008, and any complaint received by the city from any city employee since January 1, 2009. You state the city is releasing some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.103, 552.107, and 552.136 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the information in Exhibit C is subject to section 552.022(a)(16) of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision 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.

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

*Id.* § 552.022(a)(16). The information in Exhibit C consists of attorney fee bills which must be released pursuant to section 552.022(a)(16) unless they are expressly confidential under "other law." You assert portions of the fee bills are excepted under sections 552.103 and 552.107 of the Government Code and protected under Texas Rule of Evidence 503. Sections 552.103 and 552.107 are discretionary exceptions to disclosure that protect governmental bodies' interests and therefore may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the city may not withhold any portion of the fee bills under section 552.103 or section 552.107. 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). We will, therefore, consider your argument under rule 503 of the Texas Rules of Evidence for the information subject to section 552.022(a)(16). We will also consider your argument under section 552.136 of the Government Code for the marked information in Exhibit B.

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 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). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7.

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 have marked information within the fee bills in Exhibit C that you seek to withhold as attorney-client privileged communications under rule 503. You indicate these communications were made for the purpose of facilitating the rendition of professional legal services to the city and have remained confidential. Although you have not identified the parties to the communications, we are able to discern the identities of some privileged parties from the submitted documents. Based on your representations and our review, we conclude the information we marked may be withheld under Texas Rule of Evidence 503. However, the remaining information you marked in the submitted fee bills either reveals a communication with a party who is not identified as privileged, or does not reveal a communication. Because you failed to provide this office with the necessary facts to demonstrate the elements of the attorney-client privilege with respect to the remaining marked information in Exhibit C, this information is not privileged under rule 503.

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.” Gov’t Code § 552.136(b). Section 552.136(a) defines “access device” as “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 . . . 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). Upon review, we agree the bank account, routing, and charge account

numbers you marked in Exhibit B are access device numbers that are excepted from disclosure under section 552.136. However, the marked check number does not constitute an access device number and may not be withheld based on section 552.136. Accordingly, with the exception of the check number, the city must withhold the information you have marked under section 552.136.<sup>2</sup>

In summary, the city may withhold the information we marked in Exhibit C under Texas Rule of Evidence 503. The city must withhold the bank account, routing, and charge account numbers you marked in Exhibit B 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.

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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/em

Ref: ID# 394304

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a bank account number and bank routing number under section 552.136, without the necessity of requesting an attorney general decision.