



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2010

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

OR2010-15242

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# 395858.

The City of La Marque (the "city"), which you represent, received a request for all invoices from a named law firm during a specified time period. You state the city is in the process of releasing some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code, as well as privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, we note the submitted information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

¹Although you raise section 552.103 of the Government Code, you have not presented any arguments supporting this exception. Therefore, we presume you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302.

²We assume that 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 that 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[.]

Gov't Code § 552.022(a)(16). In this instance, the information at issue consists of attorney fee bills. Therefore, the information must be released under section 552.022 unless it is confidential under other law. Section 552.107 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; 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). As such, section 552.107 is not other law that makes information confidential for the purposes of section 552.022(a)(16). Therefore, the city may not withhold any of the submitted information under section 552.107 of the Government Code. You seek to withhold portions of the submitted information under rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held 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 assertions of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

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 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 the communication is confidential by explaining it was not intended to be disclosed to third persons and 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 portions of the submitted fee bills, which you have marked, include privileged attorney-client communications. You state the communications at issue were made in furtherance of the rendition of legal services, and have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the city has established the information we have marked is protected by the attorney-client privilege. Thus, the city may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. However, the remaining information documents communications with an individual you have not identified or does not document communications. Accordingly, none of the remaining information at issue may be withheld under Texas Rule of Evidence 503. As you raise no further exceptions, the remaining responsive 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 395858

Enc. Submitted documents

c: Requestor
(w/o enclosures)