



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 7, 2011

Mr. Cary L. Bovey  
Counsel for the City of Brenham  
Bovey & Bojorquez, LLP  
2251 Double Creek Drive, Suite 204  
Round Rock, Texas 78664

OR2011-08061

Dear Mr. Bovey:

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# 420635.

The City of Brenham (the "city"), which you represent, received a request for invoices to the city from two named law firms during specified periods of time. You assert the city does not have some of the requested information.<sup>1</sup> You also inform us the city will withhold or release some of the requested information in accordance with Open Records Letter No. 2006-14620 (2006). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). In Open Records Letter No. 2006-14620, we determined the city may withhold some information under Texas Rule of Evidence 503, but must release the remaining responsive information to the requestor. You state some of the requested information is privileged pursuant to Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

<sup>2</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.

You acknowledge the submitted information consists of attorney fee bills that are subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides that information in a bill for attorney fees that is not protected under the attorney-client privilege is not excepted from required disclosure unless it is expressly confidential under other law; therefore, information within these fee bills may only be withheld if it is confidential under other law. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" that makes information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under Texas Rule of Evidence 503.

Rule 503(b)(1) provides the following:

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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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

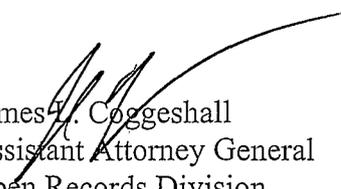
client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1998, no pet.) (privilege attaches to complete communication, including factual information).

You indicate the submitted attorney fee bills contain confidential communications between city attorneys and representatives of the city that were made for the purposes of facilitating the rendition of professional legal services to the city. However, having considered your representations and reviewed the information at issue, we find you have not established some of the information you seek to withhold constitutes privileged attorney-client communications because this information either does not document communications or it documents a communication with individuals you have not established are privileged parties. Thus, the city may not withhold this information, which we have marked for release, under rule 503. However, we conclude you have established the remaining information you have marked does constitute privileged attorney-client communications. Thus, with the exception of the information we have marked for release, the city may withhold the information you have marked under Texas Rule of Evidence 503. The city must release the remaining information.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 420635

Enc. Submitted documents

c: Requestor  
(w/o enclosures)