



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2011

Mr. Patrick W. Lindner  
For Bexar-Medina-Atascosa Counties Water Control & Improvement District  
Davidson & Troilo, P.C.  
7550 West IH-10, Suite 800  
San Antonio, Texas 78229-5815

OR2011-08231

Dear Mr. Lindner:

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# 420074.

The Bexar-Medina-Atascosa Counties Water Control & Improvement District (the "district"), which you represent, received a request for attorney fee bills during a specified time period and the meeting minutes for the February 2010, March 2010, April 2010, and May 2010 district meetings. You state the district has provided some of the requested attorney fee bill information to the requestor. You claim portions of the submitted attorney fee bills are excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note you have not submitted the requested meeting minutes. To the extent information responsive to that part of the request existed on the date the district received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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<sup>1</sup>Although you also indicate some of the information at issue may be protected by the attorney work product privilege, you have not submitted any arguments explaining how this privilege applies to the submitted information. Therefore, we presume you no longer assert this claim. *See* Gov't Code §§ 552.301, .302.

Next, we note the submitted information is subject to section 552.022 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:

...

(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). The submitted information consists of attorney fee bills. Such information must be released unless it is expressly confidential under other law. You assert portions of the submitted fee bills are excepted from disclosure under the attorney-client privilege encompassed by section 552.107(1) of the Government Code and Texas Rule of Evidence 503. We note, however, section 552.107(1) 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 section 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.107(1) is not "other law" for purposes of section 552.022. Therefore, the district may not withhold any of the information at issue under section 552.107(1) of the Government Code. The Texas Supreme Court, however, has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your arguments under Texas Rule of Evidence 503 for the submitted information.

Texas Rule of Evidence 503 provides, in relevant 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 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

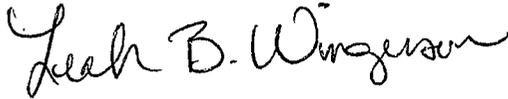
You claim the information you have marked within the fee bills consists of communications between district officials and attorneys for the district made for the purpose of facilitating the rendition of professional legal services to the district. You state the communications were made in confidence, and that confidentiality has been maintained. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to some of the information at issue. Thus, the district may withhold this information, which we have marked, under Texas Rule of Evidence 503. However, the remaining information you seek to withhold either reveals communications with a party who is not identified as privileged or does not reveal communications. Therefore, you have failed to demonstrate the remaining information you seek to withhold is protected under the attorney-client privilege. Consequently, the district may not withhold any of the remaining information at issue under Texas Rule of Evidence 503. As you have not claimed any other exceptions to 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](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 "Leah B. Wingerson".

Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 420074

Enc. Submitted documents

c: Requestor  
(w/o enclosures)