



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2011

Ms. Debra A. Drayovitch
Attorney for the City of Corinth
Drayovitch, P.C.
620 West Hickory
Denton, Texas 76201

OR2011-09554

Dear Ms. Drayovitch:

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# 422874.

The City of Corinth (the "city"), which you represent, received a request for 1) pay stubs for three individuals during specified time periods; 2) contracts between the city and the three individuals; 3) information, including expense reports, reflecting other compensation for a named individual during a specified time period; and 4) invoices from two specified law firms during specified time periods. You claim some of the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered your arguments you claim and reviewed the submitted information.

Initially, we note that you have only submitted a portion of the requested attorney fee bills. Thus, to the extent additional information responsive to the request existed and were maintained by the city on the date the city received the request, we assume you have released

¹Although you initially raised rule 192.5 of the Texas Rules of Civil Procedure, you have provided no arguments regarding the applicability of this rule. Since you have not submitted arguments concerning rule 192.5, we assume that you no longer urge it. *See* Gov't Code §§ 552.301(b), (e), .302. Additionally, you also raise section 552.022 of the Government Code as an exception. However, section 552.022 is not an exception to disclosure, but is a provision in the Act that lists categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See id.* § 552.022.

that information. 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).

Next, as 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 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). Although you seek to withhold the information at issue under sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and 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 Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103 and 552.107 are not other law that makes information confidential for the purposes of section 552.022(a)(16), and the city may not withhold the submitted attorney fee bills under these exceptions. The Texas Supreme Court has held, however, that the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will address your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence for the fee bills at issue.

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides:

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 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, orig. proceeding).

You claim some of the submitted fee bills are confidential in their entirety. However, section 552.022(a)(16) of the Government Code provides that information “that is *in* a bill for attorney’s fees” is not excepted from required disclosure unless it is confidential under “other law” or privileged under the attorney-client privilege. *See* Gov’t Code § 552.022(a)(16) (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. *See* Open Records Decision Nos. 676 (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney’s legal advice).

You state the attorney fee bills contain confidential communications between the city and the city’s attorneys and outside legal counsel. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the city. Further, you indicate the fee bills were intended to be, and have remained, confidential. Upon review of the submitted attorney fee bills, we agree that some of the information at issue is protected by the attorney-client privilege. We note, however, that you have not specifically identified, by name, any of the privileged parties. *See* ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in rule 503). We are unable to discern who the privileged parties are, with the exception of the attorneys and law firm employees listed as providing legal services in the submitted fee bills and certain city employees and representatives we are able to identify from the submitted information. Additionally, some of the information you have marked documents communications with non-privileged parties.

Furthermore, there is no indication some of the information at issue was actually communicated to a privileged party. Therefore, we find the city has failed to demonstrate how the remaining information at issue documents confidential communications that were made between privileged parties. Accordingly, the city may only withhold the information we have marked in the submitted attorney fee bills pursuant to 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, 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 422874

Enc. Submitted documents

c: Requestor
(w/o enclosures)