



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2011

Mr. Paul C. Isham
Interim City Attorney
City of New Braunfels
P.O. Box 311747
New Braunfels, Texas 78130

OR2011-13354

Dear Mr. Isham:

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# 429931 (New Braunfels ORR Nos. 2011-139 & 2011-165).

The City of New Braunfels (the "city") received two requests from different requestors seeking invoices of certain legal expenses paid by the city during specified time periods. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information consists of attorney fee bills, which 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). You assert this information is excepted under sections 552.103 and 552.107 of the Government Code. 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 the submitted 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 attorney-client privilege argument for the submitted information under rule 503 of the Texas Rules of Evidence.

Texas Rule of Evidence 503 enacts 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, no writ).

You claim 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). Consequently, the submitted information may not be withheld in its entirety.

Alternatively, you assert the portions of the fee bills you have highlighted are privileged under rule 503. You contend the information you highlighted reveals confidential communications between the city and a law firm hired by the city. We understand these communications were made for the purpose of facilitating the rendition of professional legal services to the city. Based on your representations and our review, we conclude the information we have marked may be withheld under Texas Rule of Evidence 503. However, the remaining information either does not reveal a communication, reveals a communication with a party who is not identified as privileged with respect to the communication, or reveals the creation of a document but does not reflect whether the document was communicated. You have failed to demonstrate how this remaining information reveals communications between privileged parties. *See* ORD 676. Thus, the remaining submitted information is not privileged under rule 503. As you raise no further exceptions to disclosure of the remaining information, the city must release this information to the requestor.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 429931

Enc. Submitted documents

c: Requestor
(w/o enclosures)