



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2011

Ms. Karyna Soldatova
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2011-14441

Dear Ms. Soldatova:

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# 432120.

The City of College Station (the "city") received a request for billing records for services provided by a named individual during a specified time period. You claim the submitted information is privileged under rule 503 of the Texas Rules of Evidence. We have considered your argument and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information is subject to section 552.022(a)(16) of the Government Code, which provides, in part:

[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:

...

(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 submitted information consists of attorney fee bills. Thus, the city must release this information pursuant to section 552.022(a)(16) unless it is expressly confidential under other law. 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). Accordingly, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503.

Texas Rule of Evidence 503 encompasses the attorney-client privilege, providing, 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 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 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 claim the submitted fee bills are confidential in their entirety under rule 503. However, section 552.022(a)(16) of the Government Code provides 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 also* Open Records Decision Nos. 676 (2002) (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). Thus, under rule 503, the city may withhold only those parts of the submitted fee bills that document privileged communications.

You claim the submitted fee bills reveal privileged attorney-client communications. You have identified most of the parties to these communications. You state the communications were made in furtherance of the rendition of legal services to the city. You also represent the communications were intended to be confidential and have not been disclosed to third parties. Based on your representations and our review, we find the city has demonstrated the applicability of the attorney-client privilege to some of the information at issue. Thus, the city may withhold this information, which we have marked, under Texas Rule of Evidence 503. We find the remaining information you seek to withhold is not protected by the attorney-client privilege. Accordingly, the city may not withhold any of the remaining information under rule 503. As you raise no further argument against disclosure, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 432120

Enc. Submitted documents

c: Requestor
(w/o enclosures)