



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Mr. James R. Evans, Jr.
Hargrove & Evans, L.L.P.
4425 MoPac South
Building 3, Suite 400
Austin, Texas 78735

OR2011-16964

Dear Mr. Evans:

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# 436312.

The Cameron Appraisal District (the "district"), which you represent, received a request for attorney fee bills from and correspondence with a named attorney and law firm pertaining to a specified property and to undeveloped land located in the South Padre Island Investment Corporation. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code, as well as privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information contains 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

¹Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, although you raise section 552.022 of the Government Code, we note section 552.022 does not provide an exception to disclosure. Rather, it sets out the categories of information that are not excepted from disclosure unless they are made confidential under other law. *See* Gov't Code § 552.022.

that is not privileged under the attorney-client privilege,” unless the information is expressly confidential under “this chapter or other law.” Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov’t Code § 552.022(a)). You seek to withhold the information at issue under section 552.107 of the Government Code. However, section 552.107 is discretionary and does not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, the district may not withhold any portion of the submitted fee bills under section 552.107. However, 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 address your claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted attorney fee bills. We will also consider your argument under section 552.107 of the Government Code for the information not subject to section 552.022.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

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 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert the portions of the submitted fee bills you have marked should be withheld under rule 503. You assert the submitted fee bills include privileged attorney-client communications between the district's attorneys and district officials and staff in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the district. You indicate the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the district has established the information we have marked constitutes attorney-client communications under rule 503. Thus, the district may withhold the information we have marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, we find you have not demonstrated how the remaining information you have marked documents an attorney-client communication for purposes of rule 503. Accordingly, the remaining information you have marked may not be withheld on that basis.

You claim section 552.107 of the Government Code for portions of the information not subject to section 552.022. Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See Open Records Decision No. 676 at 6-7 (2002)*. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

As noted above, you inform us some of the remaining information, which you have marked, consists of communications between the district's attorneys and district officials and staff in their capacities as clients, made for the purpose of the rendition of legal services to the district. You state the communications were intended to be confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information you have marked. Accordingly, the district may

withhold the information you have marked within the remaining documents under section 552.107 of the Government Code.²

In summary, the district may withhold the information we have marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. The district may withhold the additional information you have marked under section 552.107(1) of the Government Code. 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 436312

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive with respect to the information at issue, we need not address your remaining arguments against its disclosure.