



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2012

Mr. Michael S. Brennan
Alamo Heights City Attorney
2015 Northeast Loop 410
San Antonio, Texas 78217

OR2012-00757

Dear Mr. Brennan:

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# 442971.

The City of Alamo Heights (the "city"), which you represent, received a request for all payments to and invoices received from non-employee attorneys related to the Drive Thru Ordinance and a specified case. You claim a portion of the submitted information is privileged under rule 503 of the Texas Rules of evidence of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

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

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or 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 which must be released pursuant to section 552.022(a)(16) unless they are made confidential by the Act or "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). We will, therefore, consider your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence for the submitted information.

Rule 503 of the Texas Rules of Evidence 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 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). 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 ORD 676* at 6-7. 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 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 seek to withhold the information you have marked within the fee bills as privileged attorney-client communications. You assert the submitted fee bills were transmitted between the attorney representing the city in the named litigation and the city attorney. You also state the portions of the submitted documents you have marked were not intended to be disclosed to third parties and would divulge litigation and policy strategy of the city. Based on your representations and our review, we conclude the information we have marked may be withheld under rule 503 of the Texas Rules of Evidence. However, the remaining information you marked does not reveal a communication. Thus, this information is not privileged under rule 503, and the city may not withhold it on that basis.

In summary, the city may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. 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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 442971

Enc. Submitted documents

c: Requestor
(w/o enclosures)