



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2012

Ms. Pamela Harrell Liston
For Trophy Club Municipal Utility District No. 1
The Liston Law Firm, P.C.
P.O. Box 1882
Rowlett, Texas 75030

OR2012-08843

Dear Ms. Liston:

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# 456206.

The Trophy Club Municipal Utility District No. 1 (the “district”), which you represent, received a request for the following: an information packet regarding two agenda items discussed at a district meeting; all communications between district staff, the district president, or a specified district director and other regulatory authorities regarding the two agenda items; and information regarding the legal expenses for district employees incurred regarding the same agenda items.¹ You state you have released some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and Texas Rule of Evidence 503. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request

¹We note the district sought and received clarification from the requestor regarding the request. *See* Gov’t Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

was received. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

Next, we note, and you acknowledge, the submitted information contains 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 confidential under the Act or other law. Gov’t Code § 552.022(a)(16). 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). Accordingly, we will address your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence for the submitted information subject to section 552.022(a)(16).

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).

Having considered your representations and reviewed the information at issue, we find you have established some of the information you seek to withhold in the submitted attorney fee bills, which we have marked, constitutes privileged attorney-client communications that the district may withhold under rule 503 of the Texas Rules of Evidence. However, you have not established any of the remaining information at issue consists of privileged attorney-client communications. Therefore, the district may not withhold any of the remaining information subject to section 552.022(a)(16) on that basis.

Next, you claim the remaining submitted information not subject to section 552.022 is excepted from disclosure under section 552.107 of the Government Code. 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).

You state the submitted e-mails consist of confidential communications made in furtherance of professional legal services rendered to the district. You state these communications were exchanged between the outside attorneys for the district and district directors and employees and contain the legal advice of the attorneys for the district. You state these communications were intended to be confidential and that the confidentiality has been maintained. Based on these representations, and our review, we agree section 552.107 is applicable to the submitted e-mails, and the district may generally withhold this information under section 552.107(1) of the Government Code. We note, however, these privileged e-mail strings include e-mails shared with non-privileged parties that are separately responsive to the instant request. Consequently, if these e-mails, which we have marked, exist separate and apart from the privileged e-mail strings in which they were included, the district may not withhold them under section 552.107(1) of the Government Code. If these e-mails do not

exist separate and apart from the privileged e-mail strings in which they were included, the district may withhold them as privileged attorney-client communications under section 552.107(1) of the Government Code.

We note the non-privileged e-mails contain information subject to section 552.137 of the Government Code. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c).² *See* Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. Therefore, to the extent the non-privileged e-mails exist separate and apart from their otherwise privileged e-mail strings, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure.³

In summary, the district may withhold the information we have marked under rule 503 of the Texas Rules of Evidence, but must release the remaining information in the attorney fee bills subject to section 552.022(a)(16) of the Government Code. The district may generally withhold the submitted e-mails under section 552.107(1) of the Government Code. However, to the extent the marked non-privileged e-mails exist separate and apart from the otherwise privileged e-mail strings, they may not be withheld under section 552.107(1) of the Government Code and must be released. In that instance, the district must withhold the e-mail addresses of members of the public, which we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure, and 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,

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

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,

A handwritten signature in cursive script, reading "Kathryn R. Mattingly". The signature is written in black ink and is positioned above the typed name.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 456206

Enc. Submitted documents

c: Requestor
(w/o enclosures)