



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 12, 2012

Ms. LeAnne Lundy
For Houston Housing Authority
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

Ms. Karen R. Miniex
Vice President and General Counsel
Houston Housing Authority
2640 Fountain View Drive
Houston, Texas 77057

OR2012-10782

Dear Ms. Lundy and Ms. Miniex:

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# 458618.

The Houston Housing Authority (the "authority"), which you represent, received a request for the following categories of information: (1) invoices for legal services received by the authority for a specified time period, (2) all contracts between the authority and law firms providing legal services to the authority for a specified time period, (3) all representation letters from the law firms providing legal services to the authority for a specified time period, and (4) all documents and e-mails sent to an attorney or law firm in response to the law firm or attorney's submission of a proposal or quote. You state the authority will release information responsive to categories two through four of the request, upon the requestor's response to a cost estimate for that information. You claim the submitted information is

privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

Section 552.022(a)(16) provides for the 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 it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(16). In this instance, the submitted information consists of attorney fee bills. Thus, the authority must release this information pursuant to section 552.022(a)(16) unless the information is confidential under the Act or other law. *Id.* The Texas Supreme Court has held the Texas Rules of Evidence are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your arguments under Texas Rule of Evidence 503.

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;

¹Although you raise section 552.022 of the Government Code, we note that section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov’t Code § 552.022. Furthermore, although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege under rule 503 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-2 (2002).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(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 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. *Id.* Upon a demonstration of all three factors, the information is 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 attorney 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). You assert the submitted information documents privileged attorney-client communications made between outside legal counsel and the authority for the purpose of facilitating the rendition of professional legal services to the authority. You also state the communications were intended to be confidential, and state they have remained so. 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 reveals a communication with individuals you have not demonstrated are privileged parties or does not reveal the content of a communication. Accordingly, this information is not

privileged under rule 503 and may not be withheld on this basis. As you raise no further exceptions to disclosure for the remaining information, it 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/dls

Ref: ID# 458618

Enc. Submitted documents

c: Requestor
(w/o enclosures)