



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2012

Mr. Cary L. Bovey
For City of Llano
Law Office of Cary L. Bovey, PLLC
2251 Double Creek Drive, Suite 204
Round Rock, Texas 78664

OR2012-13518

Dear Mr. Bovey:

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# 463269.

The City of Llano (the "city"), which you represent, received two requests from the same requestor for the text of an opinion from the city attorney regarding the sale of a specified office and its associated easement, and a copy of the city attorney's bill relating to the opinion. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information contains an attorney fee bill which is 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).

You seek to withhold portions of the attorney fee bill, which you have marked, as attorney-client privileged communications. You state the communications have not been released to third parties, and you have identified the parties to the communications. 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 bill, which we have marked, constitutes privileged attorney-client communications that the city may withhold under rule 503 of the Texas Rules of Evidence. We find you have not established any of the remaining information at issue consists of privileged attorney-client communications. Therefore, the city 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-mail consists of an attorney-client privileged communication between the city's attorney and an employee of the city in furtherance of the rendition of professional legal services. You have identified the parties to the communication, and state the communication was not intended to be disclosed to third persons. Based on your representations and our review, we find the city has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the city may withhold the submitted e-mail under section 552.107 of the Government Code.

In summary, the city may withhold the information we have marked in the attorney fee bill under rule 503 of the Texas Rules of Evidence, and the submitted e-mail under section 552.107 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,

A handwritten signature in black ink, appearing to read 'Kristi L. Wilkins', written in a cursive style.

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 463269

Enc. Submitted documents

c: Requestor
(w/o enclosures)