



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2012

Mr. Dick H. Gregg, III
Counsel for the City of Kemah
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2012-14017

Dear Mr. Gregg:

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# 464119.

The City of Kemah (the "city"), which you represent, received a request for (1) invoices and/or bills; (2) payments and/or receipts for payments from a specified law firm, or any attorney affiliated with that law firm; and (3) the most current contracts with that law firm, during a specified time period. You indicate you do not have information responsive to a portion of the request.¹ You claim portions of the submitted information are privileged under rule 503 of the Texas Rules of Evidence. We have considered your argument and reviewed the submitted information.

Initially, we note you have not submitted information responsive to category number three of the request. To the extent such information existed on the date the city received the request, we presume the city has released it. If not, the city must do so at this time. See Gov't Code §§ 552.301, .302; see also Open Records Decision No. 664 (2000) (if

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

We note, and you acknowledge, the submitted information is subject to section 552.022(a) of the Government Code, which provides in part:

(a) [T]he 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). In this instance, the submitted information consists of attorney fee bills. Thus, the city must release this information pursuant to subsection 552.022(a)(16) unless the information is confidential under the Act or other law. *Id.* However, the Texas Supreme Court has held the Texas Rules of Evidence is "other law" that makes information expressly confidential for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted information.

Texas Rule of Evidence 503(b)(1) provides:

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).

The city states portions of the information at issue are privileged under rule 503. You state the information you have marked consists of communications between the city’s attorneys and city employees and officials that were made for the purpose of providing legal advice. You state these communications have not been, and are not intended to be, disclosed to third parties. You have identified most of the parties to these communications. Based on your representations and our review, we conclude the information we have marked may be withheld under rule 503. However, the remaining information you have marked does not reveal the content of a communication. Further, some of the information at issue documents communications with individuals whom you have not identified as clients, client representatives, lawyers, or lawyer representatives. Thus, we find you have failed to demonstrate any of the remaining information at issue documents privileged attorney-client communications. Accordingly, the remaining information at issue is not privileged under rule 503 and may not be withheld on this basis. As you raise no further exceptions to disclosure, 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 cursive script that reads "Sean Opperman". The signature is written in black ink and is positioned above the typed name.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 464119

Enc. Submitted documents

c: Requestor
(w/o enclosures)