



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2012

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
P.O. Box 311747
New Braunfels, Texas 78131

OR2012-15501

Dear Ms. Richard:

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# 466734 (ORR No. 2012-322).

The City of New Braunfels (the "city") received a request for invoices for legal services from a named law firm during a specified period of time. You claim that the submitted information is privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the information at issue may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-13354 (2011). In that ruling, we held that the city may withhold certain information under Texas Rule of Evidence 503. We have no indication that the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information responsive to the instant request for information is identical to the information previously ruled upon by this office, the city must continue to rely on Open Records Letter No. 2011-13354 as a previous determination and withhold or release the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the responsive information is not

encompassed by Open Records Letter No. 2011-13354, we will consider your arguments against its release.

Next, you acknowledge the submitted information is subject to section 552.022 of the Government Code. 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 city 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 address your assertion of the attorney-client privilege 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;

(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* Open Records Decision 676 at 6-7 (1988). 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 assert the portions of the fee bills you have highlighted are privileged under rule 503. You contend the information you highlighted reveals confidential communications between the city and a law firm hired by the city. You have demonstrated these communications were made for the purpose of facilitating the rendition of professional legal services to the city. 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 does not reveal a communication, reveals a communication with a party who is not identified as privileged with respect to the communication, or reveals the creation of a document but does not reflect whether the document was communicated. You have failed to demonstrate how this remaining information reveals communications between privileged parties. *See* ORD 676. Thus, the remaining submitted information is not privileged under rule 503.

In summary, to the extent the information at issue is identical to the information previously ruled upon by this office, the city must continue to rely on Open Records Letter No. 2011-13354 as a previous determination and withhold or release the previously ruled upon information in accordance with it. To the extent the information at issue was not subject to the previous ruling, the city may withhold the information we have marked under Texas Rule of Evidence 503. As you raise no further exceptions to disclosure of the remaining information, the city must release this information to the requestor.

You also ask this office to issue a previous determination that would permit the city to withhold certain information in an attorney fee bill between the city and its legal representatives under Texas Rule of Evidence 503, without the necessity of requesting a decision under section 552.301 of the Government Code. We decline to issue such a previous determination at this time. Accordingly, 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 that reads "Sean Opperman". The signature is written in a cursive, flowing style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 466734

Enc. Submitted documents

c: Requestor
(w/o enclosures)