



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2012

Ms. Kara E. Richardson  
For East Montgomery County Improvement District  
Marks Richardson, P.C.  
3700 Buffalo Speedway, Suite 830  
Houston, Texas 77098

OR2012-20147

Dear Ms. Richardson:

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# 473703.

The East Montgomery County Improvement District (the "district"), which you represent, received a request for meeting minutes, check ledgers, and legal invoices during specified periods. You state the district has released the meeting minutes and check ledgers. You claim the submitted invoices are excepted from disclosure under sections 552.103, 552.104, and 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we must address the district's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The district received the request on September 28, 2012. Therefore, the district's deadline for requesting a ruling from this office and stating the applicable exceptions was October 12, 2012. You did not raise sections 552.103 and 552.104 until your submission on October 19, 2012. Accordingly, we

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.107 and rule 503, we note section 552.101 does not encompass other exceptions found within the Act or discovery privileges. *See* Open Records Decision No. 676 at 1-2 (2002).

find the district failed to comply with section 552.301 of the Government Code in raising these exceptions.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.103 and 552.104 are discretionary exceptions that protect a governmental body's interests and may be waived. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government). As such, these exceptions do not provide a compelling reason for non-disclosure. Therefore, the district may not withhold the submitted information under section 552.103 or section 552.104 of the Government Code.

Next, we note the submitted information consists of attorney fee-bills. You acknowledge this information is subject to section 552.022(a)(16) of the Government Code and is considered public unless it is made confidential under the Act or other law. *See Gov't Code* § 552.022(a)(16). Although you seek to withhold this information under section 552.107 of the Government Code, that section also is a discretionary exception and may be waived. *See Open Records Decision Nos. 676 at 10–11* (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.107 does not make information confidential for the purposes of section 552.022, and the district may not withhold any of the submitted information under that exception. However, the Texas Supreme Court has held 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). Therefore, we will address your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence. We note some of the information at issue is subject to section 552.136 of the Government Code, which makes information confidential under the Act.<sup>2</sup> Thus, we will also consider that exception.

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<sup>2</sup>The 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).*

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).

You claim some of the submitted fee bills are confidential in their entirety. However, section 552.022(a)(16) provides information "that is *in* a bill for attorney's fees" is not excepted from required disclosure unless it is confidential under the Act or other law. *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). Consequently, the submitted fee bills may not be withheld in their entirety.

You state the submitted fee bills constitute communications between representatives of and attorneys for the district. Although you have not identified all of the parties to the communications, we are able to discern the identities of some privileged parties from the submitted documents. You state the communications at issue were made in order to facilitate the rendition of legal services to the district. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review, we conclude the information we have marked may be withheld under rule 503 of the Texas Rules of Evidence. However, the remaining information does not reveal the content of a communication or is a communication with a party you have not identified as privileged. 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 that basis.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the district must withhold the bank account and bank routing numbers we have marked under section 552.136 of the Government Code.<sup>3</sup>

In summary, the district may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The district must withhold the bank account and bank routing numbers we have marked under section 552.136 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](http://www.oag.state.tx.us/open/index_orl.php).

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<sup>3</sup> Section 552.136 of the Government Code permits a governmental body to redact this information without requesting a decision from this office, but the governmental body must provide notice to the requestor. *See* Gov't Code § 552.136 (c)-(e).

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, appearing to read "Neal Falgoust".

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 473703

Enc. Submitted documents

c: Requestor  
(w/o enclosures)