



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2013

Mr. Jeffrey L. Moore  
Counsel for the City of Forney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2013-01766

Dear Mr. Moore:

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# 477793.

The City of Forney (the "city"), which you represent, received a request for a specified conflicts of interest statement as well as invoices and checks from a specified law firm or any other legal service for legal assistance pertaining to a specified matter. You state the city has released some of the requested information with account and routing numbers redacted.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under rule 503 of the Texas Rules of Evidence.<sup>2</sup> We have considered your argument and reviewed the submitted information.

We note, and you acknowledge, the submitted information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

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<sup>1</sup>Section 552.136 of the Government Code permits a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from this office. See Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See *id.* § 552.136(d), (e).

<sup>2</sup>Although you also claim Texas Rule of Civil Procedure 192.5, you have provided no arguments for the applicability of this rule. Because you have not submitted arguments concerning rule 192.5, we assume you no longer urge it. See Gov't Code §§ 552.301(b), (e), .302.

...

(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 information at issue consists of attorney fee bills. Therefore, the information must be released under section 552.022 unless it is confidential under other law. You seek to withhold portions of the submitted information under rule 503 of the Texas Rules of Evidence. 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). We will therefore consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

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 assert portions of the submitted fee bills, which you have marked, consist of privileged attorney-client communications between representatives of the city and the city's outside counsel. You state the communications at issue were made in furtherance of the rendition of legal services to the city, and have not been, and were not intended to be, disclosed to third parties. You have identified the parties to the communications in the submitted attorney fee bills. Accordingly, the city may generally withhold the information you have marked under Texas Rule of Evidence 503. However, some of the information you have marked either does not reveal a communication or reveals the creation of a document but does not reflect whether the document was communicated. Thus, we conclude rule 503 is not applicable to the information we have marked for release, and it may not be withheld on this basis. Accordingly, except where we have marked for release, the city may withhold the information you have marked under Texas Rule of Evidence 503. The city must release the remaining submitted information.

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), 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/tch

Ref: ID# 477793

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)