



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 21, 2014

Ms. Michelle Weiser
City Attorney for the City of Lexington
Schneider, Krugler, Kleinschmidt & Weiser, P.C.
P.O. Box 507
Giddings, Texas 78972

OR2014-04827

Dear Ms. Weiser:

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# 517496.

The City of Lexington (the "city"), which you represent, received a request for all invoices to the city from a specified law firm during a specified time period. You claim some of the submitted information is privileged under Texas Rule of Evidence 503. We have considered your argument and reviewed the submitted information.

We note the submitted information consists of attorney fee bills which are 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 information at issue.

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).

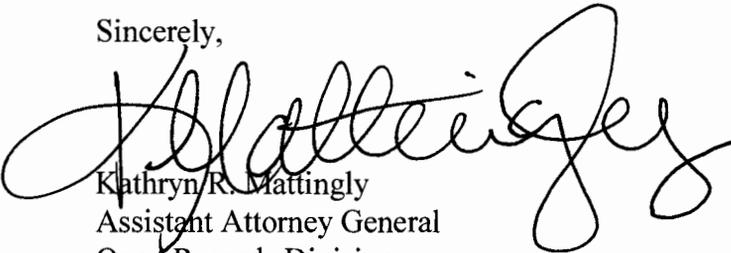
You assert the information you have marked is protected by the attorney-client privilege. You indicate the information you have marked consists of privileged communications made in furtherance of professional legal services rendered to the city. We understand these communications were intended to be and have remained confidential. *See* Open Records Decision No. 676 at 8 (2002) (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume communication was made only among categories of individuals identified in rule 503); *see generally* Open Records Decision No. 150 (1977) (predecessor to Act places burden on governmental body to establish why and how exception applies to

requested information); *Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). Upon review, we find you have established portions of the submitted information, which we have marked, constitute confidential attorney-client communications under rule 503. Thus, the city may withhold the information we have marked pursuant to Texas Rule of Evidence 503. However, we find the remaining information at issue either reveals communications with an individual you have not demonstrated is a privileged party or the information does not reveal the content of a communication. Accordingly, none of the remaining information at issue may be withheld on that basis. Instead, the city must release the remaining information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 517496

Enc. Submitted documents

c: Requestor
(w/o enclosures)