



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2014

Ms. Sarah C. Dionne
Counsel for the City of Weslaco
Guerra & Farah, P.L.L.C.
4101 Washington Avenue, 3rd Floor
Houston, Texas 77007

OR2014-22859

Dear Ms. Dionne:

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# 547274.

The City of Weslaco (the "city"), which you represent, received a request for three categories of information, including attorney fee bills pertaining to specified cases. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information consists of attorney fee bills that 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). Although you raise section 552.103 of the Government Code for the attorney fee bills, this exception is discretionary in nature and does not make information confidential under the Act. *See 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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the information subject to section 552.022(a)(16) under section 552.103. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential

for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider the city's 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 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 state the information you have marked in the submitted attorney fee bills consists of communications made for the purpose of facilitating the rendition of professional legal

services. Further, we understand the communications were intended to be, and have remained, confidential. Upon review, we find the information we have marked constitutes privileged attorney-client communications the city may withhold under rule 503 of the Texas Rules of Evidence. However, the remaining information at issue either does not reveal a communication, reveals a communication with a party whom the city has not established as privileged with respect to the communication, or reveals the creation of a document but does not reflect whether the document was communicated. Thus, you have not established any of the remaining information you have marked consists of privileged attorney-client communications. Therefore, the city may not withhold any of the remaining information on that basis. As you raise no further exceptions to disclosure, the city must release the remaining 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.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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 547274

Enc. Submitted documents

c: Requestor
(w/o enclosures)