



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 8, 2016

Ms. Carah-Beth Bass  
Counsel for County of Milam  
Allison, Bass & Magee, L.L.P.  
402 West 12th Street  
Austin, Texas 78701

OR2016-13104

Dear Ms. Bass:

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# 613365.

Milam County (the "county"), which you represent, received two requests for a specified final audit report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.116, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed report subject to section 552.022(a)(1) of the Government Code. A completed report must be released under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. Although you seek to withhold the submitted information under sections 552.107, 552.111, and 552.116 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county may not withhold any of the submitted information under section 552.107, section 552.111, or section 552.116 of the Government Code. However, we note the attorney-client privilege encompassed by section 552.107 is also found in Texas Rule of Evidence 503, and the work product privilege encompassed by section 552.111 is also found in Texas Rule of Civil Procedure 192.5. The Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The county also raises sections 552.101, 552.108, 552.117, 552.130, and 552.136 of the Government Code. We note sections 552.101, 552.117, 552.130, and 552.136 make information confidential under the Act and information subject to section 552.022(a)(1) may be withheld under section 552.108. Accordingly, we will consider the applicability of rules 503 and 192.5 and sections 552.101, 552.108, 552.117, 552.130, and 552.136 to the submitted information.

Texas Rule of Evidence 503 enacts the attorney-client privilege, providing in relevant part:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; 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 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 county district attorney, in conjunction with the county's commissioners court, hired an auditor to conduct an audit of the county tax assessor-collector's accounts. You state the submitted information is for the rendition of legal services to the county. You also inform us the submitted information was intended to be, and has remained, confidential. Based on your representations and our review, we find the county has demonstrated the applicability of the attorney-client privilege to the submitted information. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding attorney's entire investigative report was protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purposes of providing legal services and advice). Thus, the county may withhold the submitted information under Texas Rule of Evidence 503.<sup>1</sup>

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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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](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,

A handwritten signature in black ink, appearing to read "Ian Lancaster". The signature is fluid and cursive, with a large initial "I" and a long, sweeping underline.

Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 613365

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)