



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2016

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2016-17494

Dear Ms. Silver:

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# 620990.

The City of Dallas (the "city") received four requests from two requestors for payments and authorizations for payment associated with specified cases. You claim the submitted information is excepted from disclosure under section 552.136 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.3. We have considered your arguments and reviewed the submitted representative sample of information.¹

We note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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

...

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(16) information that is in a bill for attorney's fees and is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). The submitted information contains information in accounts, contracts, invoices, purchase orders, and receipts that are subject to section 552.022(a)(3) and attorney fee bills that are subject to section 552.022(a)(16), which must be released unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(3), (16). You raise rule 503 of the Texas Rules of Evidence and rule 192.3 of the Texas Rules of Civil Procedure for the information subject to section 552.022 of the Government Code. The Texas Supreme Court has held the Texas Rules of Evidence and the 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). Accordingly, we will consider your arguments under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.3 for the information at issue. We will also consider your arguments for the submitted information not subject to section 552.022.

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, orig. proceeding).

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 to the city. You explain the communications were exchanged between outside counsel for the city and city employees and attorneys. You state the communications were intended to be, and have remained, confidential. Having considered your representations and reviewed the information at issue, we find you have established some of the information you seek to withhold, which we have marked, constitutes privileged attorney-client communications the city may withhold under rule 503 of the Texas Rules of Evidence.² However, the remaining information at issue either is not a communication or is a communication with a party whom the city has not established as privileged with respect to the communication. 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.

The consulting expert privilege is found in rule 192.3 of the Texas Rules of Civil Procedure. A party to litigation is not required to disclose the identity, mental impressions, and opinions of consulting experts whose mental impressions or opinions have not been reviewed by a testifying expert. *See* TEX. R. CIV. P. 192.3(e). A “consulting expert” is defined as “an expert who has been consulted, retained, or specially employed by a party in anticipation of litigation or in preparation for trial, but who is not a testifying expert.” TEX. R. CIV. P. 192.7. You inform us the city contracted with consulting experts for services in anticipation of and preparation for litigation. Furthermore, you state these experts were retained solely for consultation and did not testify at trial. Based on your representations, we conclude the city may withhold the information we have marked under Texas Rule of Civil Procedure 192.3(e). However, the remaining information does not reveal the identity, mental

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

impressions, or opinions of the consulting experts. Accordingly, the city may not withhold the remaining information on the basis of Texas Rule of Civil Procedure 192.3(e).

Section 552.136 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”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, we find the city must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code.

In summary, the city may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The city may withhold the information we have marked under rule 192.3(e) of the Texas Rules of Civil Procedure. The city must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code. 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 620990

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)