



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2016

Mr. Michael Bostic
Assistant City Attorney
City of Dallas
Office of the City Attorney
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2016-18824

Dear Mr. Bostic:

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# 623223.

The City of Dallas (the "city") received a request for paid billing statements or city council approved payments to a specified law firm regarding three specified cases from 1994 through 1999. You claim some of the submitted information is privileged under rule 503 of the Texas Rules of Evidence. We have considered your argument and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, 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 expressly confidential under the Act or other law. Gov't Code § 552.022(a)(16). We note 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

¹We assume 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.

S.W.3d 328, 336 (Tex. 2001). Accordingly, we will address your claim of the attorney-client privilege 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:

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 not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that 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 that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the information you have marked in the submitted fee bills consist of communications between outside counsel for the city and city attorneys and employees. You state the communications were intended to facilitate the rendition of legal services to the city. You further state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we conclude the city may withhold the information we marked under rule 503 of the Texas Rules of Evidence. However, we find the remaining information at issue either does not indicate it was communicated or consists of communications with parties whom you have not established are privileged parties for purposes of rule 503. We note an entry stating a memorandum or an e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Therefore, we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information at issue. Accordingly, the city may not withhold the remaining information at issue under rule 503 of the Texas Rules of Evidence. 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 623223

Enc. Submitted documents

c: Requestor
(w/o enclosures)