



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 23, 2016

Mr. Steven R. Guy  
Attorney for City of Jacksonville  
Norman, Angle, Guy & Brewer, PLLC  
215 East Commerce, Second Floor  
Jacksonville, Texas 75766

OR2016-18994

Dear Mr. Guy:

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# 623780.

The City of Jacksonville (the "city"), which you represent, received a request for all bills, including legal bills, related to a specified lawsuit. You claim portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you raise sections 552.022, 552.301, and 552.302 of the Government Code, these sections are not exceptions to disclosure. *See* Gov't Code §§ 552.022 (enumerating categories of information not excepted from disclosure unless made confidential under Act or other law), .301 (providing procedural requirements for requesting ruling), .302.

<sup>2</sup>We 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.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to the lawsuit specified in the request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

Next, we note the responsive 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). You seek to withhold the information subject to section 552.022(a)(16) under section 552.107 of the Government Code. However, section 552.107 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 676 at 10-11 (2002) (attorney-client privilege under Gov’t Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under this exception. The Texas Supreme Court has held, however, 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 claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the responsive attorney fee bills.

Texas Rule of Evidence 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 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 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 assert portions of the responsive fee bills, which you have marked, are protected by the attorney-client privilege. You indicate the responsive fee bills include privileged attorney-client communications between the city’s outside counsel and city officials and staff in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the city. You do not indicate the city has waived the attorney-client privilege with regard to the communications. Upon review, we find the city has established the information we have marked constitutes attorney-client communications under rule 503. Thus, the city may withhold the information we have marked within the responsive attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, we find you have failed to demonstrate the remaining responsive information you marked consists of privileged attorney client communications. Accordingly, no portion of the remaining information at issue may be withheld under rule 503. As no other exceptions against disclosure have been raised, the remaining responsive information must be released.

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](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 that reads "Matthew Taylor". The signature is written in a cursive style with a long horizontal stroke at the end.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/dls

Ref: ID# 623780

Enc. Submitted documents

c: Requestor  
(w/o enclosures)