



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2006

Mr. J. Greg Hudson
Hudson & O'Leary L.L.P.
1717 West Sixth Street, Suite 258
Austin, Texas 78703

OR2006-06692

Dear Mr. Hudson:

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# 252174.

The Montgomery County Hospital District (the "district"), which you represent, received a request for the district's attorney bills from July 2004 to the present.¹ You state you released redacted fee bills in response to the request, but you claim that portions of the remaining requested information are privileged under Rule 503 of the Texas Rules of Evidence. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that a portion of the submitted information is not responsive to the present request. In this instance, the requestor is seeking the district's attorney fee bills from July 2004 to the present. Therefore, any submitted fee bills falling outside of the specified date range are not responsive to the present request. Thus, this ruling only addresses the

¹You state, and provide documentation showing, that the district sought and received clarification from the requestor regarding her request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

availability of the remaining submitted information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed).

Next, we note, and you acknowledge, that the responsive information is subject to section 552.022 of the Government Code. This section provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

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

Gov't Code § 552.022(a)(16). Because the responsive information is contained in the district's bills for attorney's fees, the information must be released under section 552.022(a)(16) unless it is expressly confidential under other law. The Texas Supreme Court has held that the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). The attorney-client privilege is found at Texas Rule of Evidence 503. Therefore, we will address your assertion of the attorney-client privilege under rule 503.

Rule 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 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 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. 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You contend that portions of the responsive attorney fee bills are protected by the attorney-client privilege under rule 503. You inform us that the information at issue relates to privileged communications between attorneys for and representatives of the district. You state that these communications were made for the purpose of facilitating the rendition of professional legal services. You also state that these communications were intended to be confidential, and you indicate that they remain confidential. Based on your representations and our review of the marked information that you claim is privileged, we find that you have demonstrated that some of the information at issue is confidential under rule 503. We also find, however, that you have not identified each of the parties to the remaining communications at issue as being privileged parties under rule 503(b)(1). *See* Open Records Decision No. 676 at 8 (2002). Likewise, you have not shown that other information that you seek to withhold under rule 503 constitutes or documents an attorney-client communication. *See id.* at 7. We therefore conclude that the district may not withhold any of the remaining information that you claim is privileged under rule 503. Accordingly, the district may withhold under rule 503 the information we have marked.

In addition, we note that the submitted information includes an account number that is confidential under section 552.136 of the Government Code.² Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card,

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 431 (1987), 480 (1987), 470 (1987).

or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Thus, pursuant to this section, the district must withhold the account number we have marked in the submitted information.

In summary, the district must withhold the marked account number under section 552.136. The district may withhold the marked information that is confidential under Texas Rule of Evidence 503. The remaining responsive information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 252174

Enc. Submitted documents

c: Ms. Nicol Huff
15 Cattail Place
The Woodlands, Texas 77381
(w/o enclosures)