



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2006

Ms. Lynn Owens
Reeves County Auditor
P O Box 2072
Pecos, Texas 79772

OR2006-09902

Dear Ms. Owens:

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# 256426.

The Reeves County Auditor (the "auditor") received a request for all contracts, billing statements, and liability insurance policies for several named parties from January 2000 through the present date. You state that the auditor does not have some of the requested information.¹ You claim that the submitted information is excepted from disclosure under the attorney-client privilege. We have considered your argument and reviewed the submitted information. We have also considered comments submitted by the requestor and the attorney whose firm issued the billing statements. See Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially, we note that the submitted 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:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create information responsive information, or obtain information that is not held by or on behalf of the city. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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

Id. § 552.022(a)(16). In this instance, the submitted information consists entirely of attorney fee bills. Therefore, the information must be released under section 552.022 unless it is confidential under other law. You claim the submitted information is confidential under the attorney-client privilege. The Texas Supreme Court has held that the attorney-client privilege found in the Texas Rules of Evidence is 'other law' within the meaning of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under rule 503 of the Texas Rules of Evidence.

Rule 503 enacts the attorney-client privilege and provides in part:

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

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 that the submitted attorney fee bills reveal communications between the Reeves County Sheriff (the “sheriff”) and the representatives of, and attorneys for, the sheriff. You state that these communications were made for the purpose of facilitating the rendition of professional legal services to the sheriff and were not intended to be disclosed to third parties. The requestor, however, cites to Attorney General Opinion JM-824 (1987) and states that the attorney-client privilege has been waived because the attorney fee bills were sent to and reviewed by the auditor, Reeves County (the “county”), and the county commissioners’ court (the “commissioners’ court”) for payment purposes. Attorney General Opinion JM-824 addressed, in part, those instances where an attorney is hired by a county to represent a public official. That opinion held that the attorney for the public official must keep in confidence all privileged aspects of the attorney-client relationship. Further, it held that if the attorney discusses privileged aspects arising out of the representation, the attorney waives the attorney-client privilege. Upon review, however, we find that Attorney General Opinion JM-824 is distinguishable from the facts presented here. In this instance, both the sheriff and the county are co-defendants to a lawsuit, are being represented by attorneys paid for by the commissioners’ court, and the attorney fee bills are provided to the auditor, county, and commissioners’ court for payment purposes. Attorney General Opinion JM-824 did not address the applicability of the attorney-client privilege to attorney fee bills for the purposes of the Act. Instead, it discussed whether or not a county commissioner bringing the suit may be excluded from meetings of the commissioners court where discussions are held between the commissioners and the attorney employed to represent the public official. Further, the opinion did not consider circumstances where a county is a co-defendant of the public official who is a party to the attorney-client relationship at issue. Thus, we conclude that Attorney General Opinion JM-824 is inapplicable in this instance. Accordingly, based on the auditor’s representations and our review of the information and circumstances at issue, we find that the attorney-client privilege has not been waived and that some of the information you seek to withhold is protected under the attorney-client privilege. This information, which we have marked, may be withheld pursuant to Texas Rule of Evidence 503. However, you have failed to demonstrate that the remaining submitted information is privileged under Texas Rule of Evidence 503. Therefore, this remaining information must be released to the requestor.

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ir

Ref: ID# 256426

Enc. Submitted documents

c: Mr. Pascual Olibas
P O Box 220234
El Paso, TX 79913
(w/o enclosures)