



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2009

Mr. Randall J. Cook
Hardy & Atherton
One American Center, Suite 750
909 ESE Loop 323
Tyler, Texas 75701

OR2009-05749

Dear Mr. Cook:

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# 341369.

The Crockett Independent School District (the "district"), which you represent, received a request for invoices pertaining to a specified attorney's work for the district. You state that a portion of the responsive information has been released to the requestor. You claim that the submitted information is privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, you acknowledge that the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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[.]

Id. § 552.022(a)(16). The submitted information consists of attorney fee bills, which are made public under section 552.022(a)(16). Section 552.022 provides for the required public disclosure of this information, unless it is expressly confidential under other law. *Id.* The

Texas Supreme Court has held that 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 consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503.

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 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. *See Open Records Decision No. 676 (2002)*. 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). *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, no pet.) (privilege attaches to complete communication, including factual information).

You indicate that the information you have marked consists of communications between the district's attorney or his legal assistant and the district's representatives made for the purpose of the rendition of professional legal services. Based on your representations and our review of the information at issue, we determine that the district may withhold some of the submitted information you have highlighted on the basis of the attorney-client privilege under Texas Rule of Evidence 503. However, a portion of the information you highlighted consists of communications with outside parties you have not identified, or does not document a communication. The district has failed to establish the applicability of Rule 503 to this information, which we have marked for release, and it may not be withheld on this basis. As you raise no other exceptions to disclosure of the remaining information, it 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/dls

Ref: ID# 341369

Enc. Submitted documents

c: Requestor
(w/o enclosures)