



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 1, 2009

Mr. Charles E. Zech  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-12331

Dear Mr. Zech:

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# 354133.

The City of Live Oak (the "city"), which you represent, received a request for a specified sales tax report and information regarding specified city expenditures. You state the city has released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code or privileged under rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

We note that a portion of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

- (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:

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<sup>1</sup>Although you also raise Texas Rule of Civil Procedure 192.5, you have not submitted arguments explaining how this rule applies to the submitted information. Therefore, we do not address rule 192.5. See Gov't Code §§ 552.301(e)(1)(A), .302.

....  
(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). The submitted information contains 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.* You assert that the information you have marked in the submitted fee bills is excepted from disclosure by section 552.107 of the Government Code. Section 552.107 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the city may not withhold information contained in the submitted fee bills under section 552.107. However, 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 for the submitted attorney fee bills. We will also consider your argument under section 552.107 for the remaining information not subject to section 552.022.

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. 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).

We understand you to claim the attorney-client privilege for the marked portions of the submitted attorney fee bills. You state that the marked information documents communications between attorneys for and representatives of the city that were made in connection with the rendition of professional legal services. You indicate that the communications were intended to be confidential, and you do not indicate that their confidentiality has been waived. You have identified most of the parties to the communications. Based on your representations and our review of the information at issue, we conclude that the city may withhold the information we have marked on the basis of the attorney-client privilege under Texas Rule of Evidence 503. We find, however, that you have not demonstrated how any of the remaining information you have marked constitutes privileged attorney-client communications; therefore, the city may not withhold any of the remaining information under rule 503. As you raise no other arguments against disclosure of the information subject to section 552.022, the city must release the remaining information in the attorney fee bills to the requestor.

We now address your argument under section 552.107 for the information not subject to section 552.022. Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD 676 at 6-7. The elements of the privilege under section 552.107 are the same as those for rule 503 outlined above.

You state that the remaining information documents a communication between an attorney for and a representative of the city that was made in connection with the rendition of professional legal services. You indicate that the communication was intended to be

confidential, and you do not indicate that its confidentiality has been waived. You have identified the parties to the communication. Based on your representations and our review of the information at issue, we conclude that the city may withhold the remaining information under section 552.107 of the Government Code.

In summary, the city may withhold the information we have marked in the documents subject to section 552.022(a)(16) of the Government Code on the basis of the attorney-client privilege under Texas Rule of Evidence 503. The city must release the remaining information subject to section 552.022. The city may withhold the information not subject to section 552.022 under section 552.107 of the Government Code.

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](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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 354133

Enc. Submitted documents

c: Requestor  
(w/o enclosures)