



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 9, 2009

Mr. Alex J. Fuller
Davis & Davis
P.O. Box 1588
Austin, Texas 78767

OR2009-12711

Dear Mr. Fuller:

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# 354702.

The Trinity Memorial Hospital District (the "district"), which you represent, received a request for the following information: certain forms, lists, and ballots pertaining to a May 9, 2009 election; correspondence between district officials and board members pertaining to the election; and the district's attorneys' fee bills during a specified time period. You state you have released most of the requested information. You inform this office that you do not have any information responsive to the request for election records.¹ You claim that the remaining responsive information is excepted from disclosure under section 552.136 of the Government Code, and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, you acknowledge that the submitted attorney's fee bills 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 other law. Gov't Code § 552.022(a)(16). 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). We will therefore consider your argument under Rule 503 of the Texas Rules of Evidence.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received, or obtain information that is not held by or on behalf of the governmental body. *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).

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. 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 have marked the information within the submitted attorney fee bills that reveals communications. You state that these communications were (1) between the district's outside counsel and employees and representatives of the district, (2) made for the purpose of facilitating the rendition of professional legal services to the district, and (3) intended to be and have remained confidential. Based on your representations and our review, we conclude that the information we marked may be withheld under Texas Rule of Evidence 503. However, the remaining information in the submitted fee bills does not reveal

communications between privileged parties. Thus, the remaining information is not privileged under rule 503 and must be released.

Next, we address your arguments for the remaining information. You assert the check numbers, invoice numbers, account numbers, and routing numbers in the submitted checks and receipts are excepted under section 552.136. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). The district must withhold the bank account numbers and routing numbers we marked under section 552.136. However, you have failed to demonstrate how the check numbers and invoice numbers are access device numbers for purposes of section 552.136; therefore they may not be withheld.

In summary, the district may withhold the information we marked as privileged under Texas Rule of Evidence 503. The district must withhold the account and routing numbers we marked under section 552.136 of the Government Code. The remaining 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.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/cc

Ref: ID# 354702

Enc. Submitted documents

cc: Requestor
(w/o enclosures)
