



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 3, 2009

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-15610

Dear Ms. Chatterjee:

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# 360387.

The University of Texas Medical Branch at Galveston ("UTMB") received a request for the following information:

1. All invoices for legal representation in relation to PIA lawsuits filed against the Attorney General from 1 January 2006 through the present.
2. The documentation of payment (e.g. cover letter, check stub, etc.) of the invoices of item #1.

Two other categories of information were requested, but you state that the University of Texas System is handling the release of information responsive to item three, as well as some information responsive to item two. You state that the information responsive to item four is contained in items one through three. Thus, you request a ruling only on items one and two. You seek to withhold certain marked information responsive to item one under Government Code section 552.101 in conjunction with Rule 503 of the Texas Rules of Evidence and Rule 192.5 of the Texas Rules of Civil Procedure. You also seek to withhold portions of information responsive to item two under Government Code section 552.136.

We have considered the exceptions you claim and reviewed the representative samples of information that you have submitted.¹

We note that the invoices are subject to section 552.022 of the Government Code, which provides that certain categories of information are not excepted from disclosure unless they are expressly confidential under other law, including "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege." Tex. Gov't Code Ann. § 552.022(a)(16). You raise Texas Rule of Evidence 503, which is "other law" within section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001) (Texas Rules of Evidence are "other law" within section 552.022).

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, to withhold attorney-client privileged

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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). *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 contain communications between attorneys for the University System and/or its component institutions and the System and/or its component institutions. You also state that the communications were made for the purpose of facilitating the rendition of professional legal services to the System and/or its component institutions and that the communications were not intended to be disclosed, nor have they been disclosed, to third parties. Based on your representations and our review of the information that you seek to withhold, we have marked the information that is confidential under Texas Rule of Evidence 503. UTMB may withhold the marked information.

We have also reviewed the item one information in relation to Rule 192.5 of the Texas Rules of Civil Procedure, which protects work product. The exception does not accord confidentiality to any information in item one that is not already protected from disclosure by Rule 503(b)(1) of the Texas Rules of Evidence.

We have reviewed information in item two, which consists of payment documents. You point out that these documents include routing numbers, bank account numbers and wire transfer information and raise Government Code section 552.136. Section 552.136 provides that an access device number collected, assembled, or maintained by or for a governmental body is confidential. *See Tex. Gov't Code Ann. § 552.136(b)*. An “access device” includes a “code, account number, personal identification number, electronic serial number . . . or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value; or . . . initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). We agree that the “access device” information must be withheld and have marked the documents accordingly.

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

Sincerely,



Susan Garrison
Assistant Attorney General
Opinion Committee

SLG/pdr

Ref: ID# 360387

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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