



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2012

Mr. Downing A. Bolls, Jr.  
Taylor County Judge  
Taylor County Courthouse  
300 Oak Street  
Abilene, Texas 79602

OR2012-11779

Dear Mr. Bolls:

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# 460381.

Taylor County (the "county") received two requests for records related to expenditures made for a specified lawsuit. You state the county does not have information responsive to the portion of the first request seeking a document related to the reason the sheriff gave the court that the requestor was not qualified to serve at the jail and the portion of the second request related to additional court costs. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 1.05 of the Texas Disciplinary Rules of Professional Conduct.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>Although you raise section 552.022 of the Government Code, we note that section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. See Gov't Code § 552.022. Furthermore, although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege under rule 503 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision No. 676 at 1-2 (2002).

Initially, we note the submitted information is subject to section 552.022(a) of the Government Code, which provides in relevant part the following:

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 unless made confidential under this chapter or other law:

...

3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

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

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(3), (16), (18). Most of the submitted information consists of attorney fee bills subject to section 552.022(a)(16). The remaining submitted information consists of information in accounts or vouchers relating to the expenditure of county funds and a settlement agreement that are subject to subsections 552.022(a)(3) and 552.022(18), respectively. Although you claim subsections 552.107(1) and 552.107(2) of the Government Code for this information, section 552.107(1) is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *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 county may not withhold any of the submitted information under subsection 552.107(1). You also assert the submitted information is excepted from public disclosure pursuant to a court order, which you have provided to this office. Gov't Code § 552.107(2) (information is excepted from release if court by order has prohibited disclosure). However, section 552.022(b) provides that a court may not order a governmental body to withhold any category of public information subject to section 552.022(a) unless the information is confidential under the Act or other law. *See id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to subsection 552.022(a), the county may not withhold any of the submitted information under section 552.107(2). However, the Texas Supreme Court has held 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 attorney-client privilege argument under Texas Rule of Evidence 503. We note, however, the Texas Disciplinary Rules of Professional Conduct are not considered other law for purposes of section 552.022. Therefore, we do not address your argument under rule 1.05, and thus, none of the information at issue may be withheld on this basis. See ORD 676 at 3-4.

Texas Rule of Evidence 503 enacts the attorney-client privilege and provides:

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).

You claim the submitted attorney fee bills are confidential in their entirety. However, section 552.022(a)(16) of the Government Code provides that information "that is in a bill for attorney's fees" is not excepted from required disclosure unless it is confidential under "other law" or privileged under the attorney-client privilege. See Gov't Code § 552.022(a)(16). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. See Open Records Decision Nos. 676 (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney's legal advice). You assert the submitted information documents privileged attorney-client communications made between outside legal counsel and the county for the purpose of facilitating the rendition of professional legal services to the county. You also state the communications were intended to be confidential and state they have remained so. Based on your representations and our review, we conclude the information we have marked in the submitted attorney-client fee bills may be withheld under Texas Rule of Evidence 503. However, the remaining submitted information either reveals a communication with individuals you have not demonstrated are privileged parties or does not reveal the content of a communication. Accordingly, this information is not privileged under rule 503 and may not be withheld on this basis. As you raise no further exceptions to disclosure for 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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/bs

Ref: ID# 460381

Enc. Submitted documents

c: Requestors  
(w/o enclosures)

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