



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2013

Mr. Robert W. Wilson
Counsel for Frio County Emergency Services District #1
Gale, Wilson & Sánchez, P.L.L.C.
115 East Travis, 19th Floor
San Antonio, Texas 78205

OR2013-05249

Dear Mr. Wilson:

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# 482771 (PIR No. 5501).

The Frio County Emergency Services District #1 (the "district"), which you represent, received a request for the invoices of attorney fees for 2012 and January 2013. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code, and privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information consists of attorney fee bills which 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 confidential under the Act or other law. Gov't Code § 552.022(a)(16). Although you seek to withhold this information under section 552.107 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 6 (2002)

¹ Although you raise section 552.101 of the Government Code in conjunction with rule 503 and rule 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we will not address your claim that the submitted information is confidential under section 552.101 in conjunction with any of these rules. Further, although you assert privilege under rule 192.5 of the Texas Rules of Civil Procedure, you do not provide arguments explaining the applicability of this rule to the information at issue; therefore, we assume that the district is no longer asserting this privilege. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain applicability of raised exception).

(attorney-client privilege under section 552.107 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the district may not withhold the submitted information subject to section 552.022 under section 552.107 of the Government Code. 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 address your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence for the information 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 it is 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 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 the communication is confidential by explaining it was not intended to be disclosed to third persons and 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 assert portions of the submitted fee bills, which you have marked, consist of privileged attorney-client communications between representatives of the district and the district's outside counsel. You state the communications at issue were made in furtherance of the rendition of legal services to the district, were intended to be confidential, and have remained confidential. You have identified the parties to the communications in the submitted attorney fee bills. Accordingly, the district may withhold the information we have marked under Texas Rule of Evidence 503. We note, however, some of the remaining information you have marked either does not reveal a communication or reveals the creation of a document but does not reflect whether the document was communicated. Accordingly, we conclude rule 503 is not applicable to the remaining information and it may not be withheld on this basis. As you raise no exceptions to disclosure, 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, toll free at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 482771

Enc. Submitted documents

c: Requestor
(w/o enclosures)