



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2013

Mr. Ross Fischer  
Counsel for the County of Karnes  
Denton, Navarro, Rocha & Bernal, P.C.  
2500 West William Cannon, Suite 609  
Austin, Texas 78745

OR2013-09271

Dear Mr. Fischer:

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# 489201.

The County of Karnes (the "county"), which you represent, received a request for all bills for legal services rendered to the county by any law firm, related contracts or payment agreements, and audit letters from a specified law firm to outside auditors during a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.107 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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<sup>1</sup>We note the county sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

...

(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). In this instance, the submitted information in Exhibit E4 includes information in attorney fee bills, which is subject to section 552.022(a)(16). Thus, the county must release this information pursuant to section 552.022(a)(16) unless the information is confidential under the Act or other law. *Id.* Although you raise section 552.107 of the Government Code for this information, section 552.107 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county may not withhold the information subject to section 552.022 under this section. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" that makes information expressly confidential for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information subject to section 552.022. We will also address your arguments for the information not subject to section 552.022.

Texas Rule of Evidence 503(b)(1) 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 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 the billing entries you have marked in the submitted fee bills in Exhibit E4 are privileged under rule 503. You state the marked information reveals confidential communications with privileged parties, whom you have identified as representatives of the county and the county’s outside counsel. You also state these communications were made for the purpose of facilitating the rendition of professional legal services to the county. Based on your representations and our review, we find you may withhold most of the information you have marked in the submitted attorney fee bills under Texas Rule of Evidence 503. However, you have failed to demonstrate some of the information you have marked in the submitted fee bills or any of the remaining information subject to section 552.022 reveals communications between privileged parties. *See* ORD 676. Thus, except for the information we have marked for release, you may withhold the information you have marked in Exhibit E4 under Texas Rule of Evidence 503.

You claim the information not subject to section 552.022 is subject to section 552.107 of the Government Code, which protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107(1) are the same as those discussed for rule 503. 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. *See* ORD 676 at 6-7. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information not subject to section 552.022 consists of confidential communications between representatives of and attorneys for the county. You state these communications were made for the purpose of facilitating the rendition of professional legal

services to the county. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on these representations and our review, we agree section 552.107(1) is applicable to the information at issue, and the county may withhold the information in Exhibits E1, E2, and E3 under section 552.107(1) of the Government Code.<sup>2</sup>

In summary, except for the information we have marked for release, the county may withhold the information you have marked in Exhibit E4 under Texas Rule of Evidence 503. The county may withhold the information in Exhibits E1, E2, and E3 under section 552.107(1) of the Government Code. The county must release the remaining information.

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.texasattorneygeneral.gov/open\\_orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open_orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 489201

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.