



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2013

Ms. Angela M. Stepherson  
Counsel for Denton County Municipal Utility District No. 7  
Coats Rose, P.C.  
5420 LBJ Freeway, Suite 600  
Dallas, Texas 75240

OR2013-19644

Dear Ms. Stepherson:

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# 505357.

The Denton County Municipal Utility District No. 7 (the "district"), which you represent, received a request for specified information pertaining to the district. You state the district has released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code and Texas Rule of Evidence 503.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides for the 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 it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(16). In this instance, the submitted information consists of attorney fee bills.

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<sup>1</sup>Although you also raise section 552.022 of the Government Code, we note 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. Additionally, although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, 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, the district 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 assert portions of this information are excepted from disclosure under section 552.107 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information at issue under section 552.107. However, the Texas Supreme Court has held the Texas Rules of Evidence are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address your argument under Texas Rule of Evidence 503 for the information you have marked.

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 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).

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. 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. *Id.* Upon a demonstration of all three factors, the information is 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 information you have marked documents privileged attorney-client communications made between attorneys for the district and district staff for the purpose of facilitating the rendition of professional legal services to the district. You have identified some of the parties to the communications and we understand the communications were intended to be and have remained confidential. Based on your representations and our review, we conclude the information we have marked may be withheld under Texas Rule of Evidence 503. However, the remaining information at issue either reveals communications with individuals you have not demonstrated are privileged parties or the information 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. Therefore, the district 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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 505357

Enc. Submitted documents

c: Requestor  
(w/o enclosures)