



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2014

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2014-02359

Dear Mr. Smith:

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# 513343.

The Texas Health and Human Services Commission (the "commission") received a request for four categories of information, including documents related to legal services provided to the commission by Walters and Kraus, L.L.P. You state you will release some of the requested information. You claim the submitted information is privileged under rule 503 of the Texas Rules of Evidence.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-14787 (2013). In that ruling, we determined (1) the commission may withhold certain information under section 552.107(1) of the Government Code; and (2) the commission must withhold certain information under sections 552.101 of the Government Code in conjunction with section 531.1021(g) of the Government Code and release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

the previous ruling was based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the commission must rely on Open Records Letter No. 2013-14787 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure for the submitted information, which has not been previously ruled on by this office.

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. Thus, the commission must release this information pursuant to section 552.022(a)(16) unless the information is confidential under the Act or other law. *Id.* As you acknowledge, 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. *See 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 submitted information.

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).

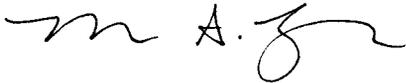
You assert the submitted fee bills should be withheld under rule 503. You assert the submitted fee bills include privileged attorney-client communications between the commission’s outside legal counsel and commission employees in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the commission. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the commission has established the information we have marked constitutes attorney-client communications under rule 503. Thus, the commission may withhold the information we have marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, we find you have not demonstrated how the remaining information documents an attorney-client communication for purposes of rule 503. Accordingly, the remaining information may not be withheld on that basis.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the commission must rely on Open Records Letter No. 2013-14787 as a previous determination and withhold or release the identical information in accordance with that ruling. The commission may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. The commission 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, 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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra". The signature is fluid and cursive, with the first name "N." and the last name "Ybarra" clearly distinguishable.

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 513343

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Cause No. D-1-GN-14-000758

TEXAS HEALTH AND HUMAN SERVICES COMMISSION, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
v.	§	201st JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, <i>Defendant.</i>	§	
	§	
	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the Texas Health and Human Services Commission (HHSC), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, HHSC and Greg Abbott, Attorney General of Texas, arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit A, and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325 (d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. Fread Houston, on June 4, 2014, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that HHSC may withhold the redacted portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this judgment as Exhibit B.

The requestor has not filed a motion to intervene.

Filed in The District Court
of Travis County, Texas

JUN 25 2014 3:00 AM

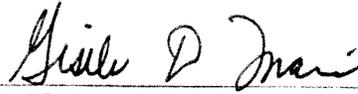
Amalia Rodriguez, Esq., Clerk

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. HHSC and the Attorney General have agreed that in accordance with the PIA and under the facts presented, portions of the information at issue, specifically the marked portions of the attorney fees bills are excepted from disclosure pursuant to Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. The Attorney General has provided HHSC a copy of the information at issue with the agreed upon redactions bracketed in red. Redactions on the released documents will be consistent with this copy. These redactions are in addition to the redactions marked by the Open Records Division during the letter ruling phase of the process.
2. HHSC may withhold from the requestor the information described in Paragraph 1 of this order.
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between HHSC and the Attorney General and is a final judgment.

SIGNED the 25 day of June, 2014.



PRESIDING JUDGE

AGREED:



ANN HARTLEY
State Bar No. 09157700
Assistant Attorney General
Financial Litigation, Tax and Charitable
Trusts Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 936-1313
Facsimile: (512) 477-2348

ATTORNEY FOR PLAINTIFF



KIMBERLY FUCHS
State Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167

ATTORNEY FOR DEFENDANT

EXHIBIT A

Cause No. D-1-GN-14-000758

TEXAS HEALTH AND HUMAN	§	IN THE DISTRICT COURT OF
SERVICES COMMISSION,	§	
<i>Plaintiff,</i>	§	
v.	§	201st JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the Texas Health and Human Services Commission (HHSC) and Greg Abbott, Attorney General of Texas. This Agreement is made on the terms set forth below.

Background

On November 6, 2013, HHSC received a written request for information from Mr. Fread Houston under the Public Information Act (PIA). The request was for information regarding legal services and consulting services contracted for by the Office of the Inspector General of HHSC.

HHSC agreed to release much of the information but asked for an open records ruling from the Attorney General, pursuant to the PIA, Tex. Govt. Code Section 552.301, for some of the information. HHSC asserted that some of the information consisted of fee bills which contained attorney-client privileged information excepted from disclosure by Texas Rule of Evidence 503.

The Attorney General issued Letter Ruling OR2014-02359 (2014) in response to HHSC's request. The ruling concluded, in pertinent part, that some of the information was excepted from disclosure, but the remaining information had to be disclosed to the requestor.

HHSC disputed the ruling and filed a lawsuit, styled Cause No. D-1-GN-14-000758, *Texas Health and Human Services Commission v. Greg Abbott, Attorney General of Texas*, In the 201st Judicial District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA.

HHSC submitted additional information to the Attorney General establishing some additional information at issue is excepted from disclosure by Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5 as attorney-client privileged information and attorney work product.

Tex. Govt. Code Section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Portions of the information at issue, specifically the marked portions of the attorney fees bills are excepted from disclosure pursuant to Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. The Attorney General has provided HHSC a copy of the information at issue with the agreed upon redactions bracketed in red. Redactions on the released documents will be consistent with this copy. These redactions are in addition to the redactions marked by the Open Records Division during the letter ruling phase of the process.

2. HHSC may withhold from the requestor the information described in Paragraph 1 of this Agreement.

3. HHSC and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the requestor. The Court, in entering final judgment, will attach this Settlement Agreement as Exhibit "A."

4. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his right to intervene to contest HHSC's right to withhold the information.

5. If the requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

6. Each party to this Agreement will bear its own costs, including attorney fees relating to this litigation.

7. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

8. HHSC warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that HHSC has against the Attorney General arising out of the matters described in this Agreement.

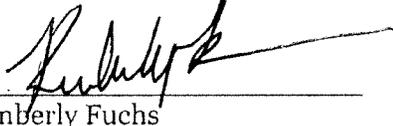
9. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against HHSC arising out of the matters described in this Agreement.

10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

TEXAS HEALTH AND HUMAN
SERVICES COMMISSION

GREG ABBOTT,
ATTORNEY GENERAL OF TEXAS

By: 
Name: Ann Hartley
Title: AAG, Financial Litigation, Tax,
and Charitable Trusts Division

By: 
Name: Kimberly Fuchs
Title: AAG, Administrative Law
Division

Date: June 4, 2014

Date: June 4, 2014

EXHIBIT B

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Fread Houston
19900 Metric Blvd. # J-213
Austin, TX 78758
[IHSC81: Req Ltr1 re settlement]

COMPLETE THIS SECTION OF RETURN

A. Signature Agent Address

B. Received by (Print Name) C. Date of Delivery Address

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number (Transfer from service label) 7007 3020 0000 0976 3477

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1-90

UNITED STATES POSTAL SERVICE



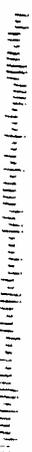
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box.

[IHSC81: Req Ltr1 re settlement]
Kimberly Fuchs, Open Records Litigation
Office of Attorney General, ALD - 018
P O BOX 12548 CAPITOL STATION
AUSTIN TX 78711-2548

RECEIVED
JUN 06 2014

OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATIVE LAW DIVISION





Search USPS.com or Track Packages

Home

Home

USPS Mail

Delivery

Tools

Sign Up

USPS Tracking™



Customer Service ›
Have questions? We're here to help.

Tracking Number: **7007302000009763477**

Product & Tracking Information

Postal Product:

Features:

Certified Mail™

DATE/TIME	STATUS/DESCRIPTION	LOCATION
June 5, 2014, 2:50 pm	Delivered	AUSTIN, TX 78758
June 5, 2014, 7:35 am	Out for Delivery	AUSTIN, TX 78758
June 5, 2014, 7:25 am	Sorting Complete	AUSTIN, TX 78758
June 5, 2014, 5:17 am	Arrival at Unit	AUSTIN, TX 78758
June 5, 2014, 2:15 am	Depart USPS Sort Facility	AUSTIN, TX 78710
June 4, 2014, 8:44 pm	Processed through USPS Sort Facility	AUSTIN, TX 78710

Available Actions

Text Updates

Email Updates

Track Another Package

What's your tracking (or receipt) number?

Track It

LEGAL

- Privacy Policy ›
- Terms of Use ›
- FOIA ›
- No FEAR Act/EEO Data ›

ON USPS.COM

- Government Services ›
- Buy Stamps & Shop ›
- Print a Label with Postage ›
- Customer Service ›
- Delivering Solutions to the Last Mile ›
- Site Index ›

ON ABOUT.USPS.COM

- About USPS Home ›
- New sroom ›
- USPS Service Alerts ›
- Forms & Publications ›
- Careers ›

OTHER USPS SITES

- Business Customer Gateway ›
- Postal Inspectors ›
- Inspector General ›
- Postal Explorer ›
- National Postal Museum ›

