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.

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ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2014

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

Mr. Ken Wright
Chief Appraiser
Galveston Central Appraisal District
9850 Emmett F. Lowry Expressway, Suite A
Texas City, Texas 77591

OR2014-02683

Dear Mr. Wright:

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# 512416.

The Galveston Central Appraisal District (the "district") received a request for certain budget and audit information; invoices, statements, and contracts referencing the billing, compensation and/or payments to two identified law firms who have provided services to the district for a specified period of time; all documents, letters, and e-mails between the district and all Galveston Taxing jurisdictions for a specified period of time; and all documents letters and emails between the district and Galveston Taxing jurisdictions related to specified accounts and tax years. You state you have released some information. You claim the remaining requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.[1] We have considered your arguments and reviewed the submitted representative sample of information.[2]

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[1]Although the district has also marked information under section 552.111 of the Government Code, you provide no arguments regarding the applicability of this section. Accordingly, the district has waived its claim under section 552.111. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

[2]We assume that the "representative sample" of records submitted to this office is truly representative of the records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note some of the information at issue 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, a portion of the information at issue consists of attorney fee bills. 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), 665 at 2 n.5 (2000). 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 at issue. Based on your representations and our review of the information at issue, we find the district has established the information we have marked constitutes attorney-client communications under rule 503. Thus, the district may withhold the information we have marked within the submitted attorney fee bills pursuant to Texas Rule of Evidence 503. However, we find the remaining information you have marked does not document a communication or documents a communication with non-privileged parties or individuals who you have not identified as privileged parties. Thus, we find you have not demonstrated how the remaining information you have marked documents an attorney-client communication for purposes of rule 503. Accordingly, the remaining information you have marked in Exhibit "B" may not be withheld on that basis.

Section 552.103 of the Government Code provides, in part:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
>
> . . .
>
> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure

> under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990).

You state, and provide supporting documentation demonstrating, prior to the district's receipt of the instant request for information, the district was involved in a number of *ad valorem* lawsuits involving property owners contesting the appraised value of their property. You state the information you have highlighted in Exhibit "C" pertains to the pending lawsuits. Based upon your representations and our review, we find the district was a party to pending litigation on the date it received the request, and the information at issue relates to the pending litigation. Accordingly, we conclude the district may withhold the information you have marked in Exhibit "C" under section 552.103 of the Government Code.

However, once information has been obtained by all parties to the litigation though discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the district may withhold the information we have marked in the attorney fee bills in Exhibit "B" under Texas Rule of Evidence 503. The district may withhold the information you have marked in Exhibit "C" under section 552.103 of the Government Code. 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.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,

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 512416

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

DEC 30 2014

At 8:43am M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GV-14-000266

GALVESTON CENTRAL APPRAISAL DISTRICT, *Plaintiff,*	§	IN THE DISTRICT COURT
v.	§	53rd JUDICIAL DISTRICT
ATTORNEY GENERAL OF TEXAS, *Defendant.*	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is an action under the Public Information Act (PIA), Chapter 552 of the Texas Government Code, in which Galveston Central Appraisal District (GCAD) sought to withhold certain information from public disclosure. All matters in controversy between GCAD, and Defendant Greg Abbott, Attorney General of Texas (Attorney General), arising out of this lawsuit have been resolved, 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 section 552.325(c), the Attorney General sent a letter by certified mail to the requestor, Mr. Greg Kort, on December 8, 2014, providing reasonable notice of this setting. The requestor was informed of the parties' agreement that GCAD may withhold portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest GCAD's right to withhold the information. The requestor has not filed a motion to intervene.

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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. The information at issue consists of GCAD's attorney-fee billing statements from year 2010 to October 28, 2013.

2. From the information described in Paragraph 1 of this Agreed Final Judgment, GCAD may withhold from the requestor information consistent with the Attorney General's markings pursuant to Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. All other requested information must be released or withheld in compliance with Attorney General Letter Ruling OR2014-02683.

3. All court costs 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 GCAD and the Attorney General and is a final judgment.

SIGNED the 30 day of December, 2014.

PRESIDING JUDGE

AGREED:

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ATTORNEY FOR PLAINTIFF
GALVESTON CENTRAL APPRAISAL
DISTRICT

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