



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2014

Ms. Jordan Hale
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2014-13205

Dear Ms. Hale:

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# 530981 (OAG PIR No. 14-14-38918).

The Office of the Attorney General (the "OAG") received a request for the case files for six specified outside counsel contracts. You state the OAG is releasing most of the requested information. Additionally, you state the OAG will redact certain information pursuant to section 552.136 of the Government Code¹ and Open Records Letter No. 2011-18124 (2011).² You state, although the OAG takes no position with respect to the submitted information, its release may implicate the interests of The University of Texas at Austin (the "university"). Accordingly, you state, and provide documentation demonstrating, the OAG notified the university of the request for information of its right to submit arguments stating why its

¹Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

²In Open Records Letter No. 2011-18124 this office issued the OAG a previous determination authorizing it to withhold an employee's user ID under section 552.139 of the Government Code without the necessity of requesting a decision from this office.

information should not be released. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have reviewed the submitted information and the arguments submitted by the university.

As the university acknowledges, the submitted information consists of attorney fee bills, which are 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[.]" *Id.* § 552.022(a)(16). The OAG must release the submitted fee bills pursuant to section 552.022(a)(16) unless the information is confidential under the Act or other law. *Id.* 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 the university's argument under Texas Rule of Evidence 503.

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).

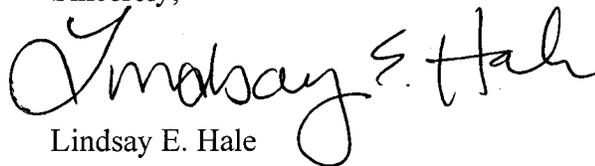
When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). Thus, in order to withhold attorney-client privileged 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).

The university explains the fee bills at issue document communications made between the university's outside legal counsel and representatives of the university for the purpose of facilitating the rendition of professional legal services to the university. Additionally, the OAG and the university explain the fee bills for the university's outside counsel were submitted by the university to the OAG for the OAG's review and approval pursuant to section 402.0212 of the Government Code and section 57.3 of title 1 of the Texas Administrative Code. *See* Gov't Code § 402.0212 (providing contract for services between state agency and outside attorney must be approved by OAG to be valid); 1 T.A.C. § 57.3 (providing OAG serves as State of Texas' legal counsel and represents state agencies and institutions of higher education, and "[a]gencies may not retain or select any Outside Counsel without first receiving authorization and approval from" OAG). Thus, the OAG and the university claim, and we agree, the OAG is a privileged party with respect to the university's fee bills at issue. Additionally, portions of the fee bills at issue contain communications with legal counsel for Baylor University ("Baylor"), which the university explains pertain to a joint research project between the university and Baylor. Accordingly, we understand the university to claim Baylor shares a common interest with the university concerning the legal matters at issue in these communications. *See* TEX. R. EVID. 503(b)(1)(c) (discussing privilege among parties "concerning a matter of common interest"); *see also In re Auclair*, 961 F.2d 65, 69 (5th Cir. 1992) (citing *Hodges, Grant & Kaufmann v. United States Government*, 768 F.2d 719, 721 (5th Cir. 1985) (attorney-client privilege not waived if privileged communication is shared with third person who has common legal interest with respect to subject matter of communication)). The university states the communications were intended to be and have remained confidential. Based on these representations and our review, we conclude the OAG may withhold the information we have marked under Texas Rule of Evidence 503. However, the remaining information at issue 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. As no further exceptions to disclosure have been raised, the OAG 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 that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 530981

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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Attorney and Public Information Coordinator
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(w/o enclosures)