



January 9, 2015

Ms. Lisa D. Mares
For the City of Keene
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-00451

Dear Ms. Mares:

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# 549476.

The City of Keene (the "city"), which you represent, received a request for a "code of ethics" document requested by a named individual at a council meeting, all correspondence from July 25, 2013, to the present between a named individual and any official of the city concerning a "code of ethics," and all billing and supporting documents including itemizations from the firm Brown & Hofmeister, LLP for fiscal year 2013. You state you do not have some of the information requested.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.107 and 552.111 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

We note the submitted information in Exhibit B-2 is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(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:

...

(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). Exhibit B-2 consists attorney fee bills that are subject to subsection 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* The Texas Supreme Court has ruled the Texas Rules of Evidence are "other law" that make information confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53S.W.3d 328 (Tex. 2001). Accordingly, we will address your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information subject to section 552.022.

Rule 503 of the Texas Rules of Evidence 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. 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). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You state portions of the submitted fee bills consist of privileged communications between attorneys for the city and city employees in their capacities as clients. You state the communications at issue were made in furtherance of the rendition of legal services to the city, and have not been and were not intended to be disclosed to third parties. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the some of the information at issue in Exhibit B-2. Accordingly, the city may withhold the information we have marked under rule 503. However, you have not demonstrated the remaining information at issue you have marked consists of privileged attorney-client communications. Thus, the city may not withhold the remaining information you have marked in Exhibit B-2 under rule 503.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 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*, 922 S.W.2d 920, 923.

You claim the information in Exhibit B-1 is protected by section 552.107(1) of the Government Code. You state the information consists of communications among attorneys for the city and city employees in their capacities as clients. You further state the communications were intended to be confidential and have remained confidential. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to

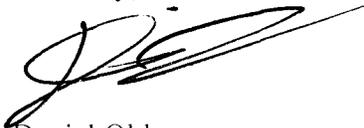
the submitted information in Exhibit B-1. Therefore, the city may withhold Exhibit B-1 in its entirety under section 552.107(1) of the Government Code.²

In summary, the city may withhold the information we have marked in the attorney fee bills under Texas Rules of Evidence 503. The city may withhold the information in Exhibit B-1 in its entirety under section 552.107(1) 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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 549476

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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