



January 13, 2015

Mr. Jeffrey L. Moore
Counsel for the Paris Economic Development Corporation
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-00644

Dear Mr. Moore:

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# 549818.

The Paris Economic Development Corporation (the "corporation"), which you represent, received a request for all documents pertaining to the expenditures and expenses of the corporation during a specified time period. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.137 of the Government Code, and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, you acknowledge some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(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:

...

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested 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 those records contain substantially different types of information than that submitted to this office.

(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). The submitted information contains attorney fee bills subject to section 552.022(a)(16). The corporation must release this information unless it is made confidential under the Act or other law. *See id.* You assert the attorney-client privilege found under Texas Rule of Evidence 503 applies to the portions of the fee bills you have marked. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the marked portions of the attorney fee bills.

Texas Rule of Evidence 503(b)(1) provides:

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).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must do the following: (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. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503, provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the submitted attorney fee bills contain confidential communications between attorneys for the corporation and corporation officers and employees. You also state these communications were made for the purpose of facilitating the rendition of professional legal services to the corporation. Further, you state the fee bills have remained confidential. Upon review, we find the corporation has established most of the information you marked in the submitted attorney fee bills constitutes privileged attorney-client communications the corporation may withhold under Texas Rule of Evidence 503. However, we conclude the corporation has not established the remaining information you marked consists of privileged attorney-client communications. Therefore, the corporation may not withhold that information, which we have marked for release, under Texas Rule of Evidence 503.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, information concerning financial transactions between an employee and a public employer are generally of legitimate public interest. *See* ORD 600 at 9-10 (information about public employee’s participation in group insurance program funded in part by the state is not protected under common-law privacy, while information concerning employee’s election to enroll in additional coverage paid solely by the employee is private). You contend the information you have indicated is protected by common-law privacy. We note, however, the information shows the corporation paid for the insurance premiums and IRA contributions at issue. Thus, we find you have not demonstrated how any of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Consequently, the corporation may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone

numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have marked the information you seek to withhold in the remaining information. You have not informed us the individuals to whom the information pertains elected to withhold their personal information prior to the corporation's receipt of the present request. Thus, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the corporation must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The corporation may not withhold this information under section 552.117(a)(1) if the individuals whose information is at issue did not make timely elections to keep the information confidential.

Section 552.136 of the Government Code states, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). You have marked the information you seek to withhold. Upon review, we agree most of the information you have marked, and the additional information we have marked, is subject to section 552.136. However, you have not demonstrated how the remaining information you have marked, which we have marked for release, constitutes a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument. Accordingly, with the exception of the information we have marked for release, the corporation must withhold the information you have marked, and the additional information we have marked, under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The

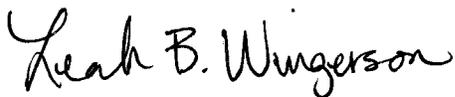
e-mail addresses at issue are not excluded by subsection (c). Therefore, the corporation must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to public disclosure.

In summary, with the exception of the information we have marked for release, the corporation may withhold the information you have marked in the attorney fee bills under Texas Rule of Evidence 503. The corporation must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code. With the exception of the information we have marked for release, the corporation must withhold the information you have marked, and the additional information we have marked, under section 552.136 of the Government Code. The corporation must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to public disclosure. The corporation 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 549818

Enc. Submitted documents

c: Requestor
(w/o enclosures)