



January 27, 2015

Mr. Ryan D. Pittman
Counsel for the City of Melissa
Abernathy, Roeder, Boyd & Joplin, PC
P.O. Box 1210
McKinney, Texas 75070-1210

OR2015-01546

Dear Mr. Pittman:

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# 551419.

The City of Melissa (the "city"), which you represent, received a request for legal fees paid to outside counsel related to the handling of open records requests during a specified time period. You claim some of the submitted information is privileged from disclosure under Texas Rule of Evidence 503.¹ We have considered the privilege you claim and reviewed the submitted information.

Initially, you state, and we agree, some of the submitted information, which you have marked, is not responsive to the present request because it does not pertain to the handling of open records requests. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

Next, we note, and you acknowledge, the submitted responsive information consists of attorney fee bills that are subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for 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

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision No. 676 at 1-2 (2002), 575 at 2 (1990).

the information is confidential under the Act or other law. Gov't Code § 522.022(a)(16). The Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider the city's assertion of the attorney-client privilege under Texas Rule of Evidence 503.

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

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).

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 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. *Id.* Upon a demonstration of all three factors, the entire communication 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). *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 extends to entire communication, including factual information).

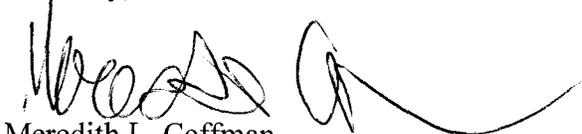
You state the information you have marked contains confidential communications between city employees, the city's outside counsel, and representatives of the city's outside counsel made to facilitate the rendition of professional legal services. You state the city has not waived the attorney-client privilege with regard to these communications. Upon review, we find the city may withhold the information we have marked under Texas Rule of Evidence 503. However, we find the remaining information at issue either does not indicate it was communicated or consists of communications with parties whom you have not established are privileged parties for purposes of rule 503. Therefore, the city has not demonstrated the remaining information at issue constitutes privileged attorney-client communications for the purposes of Texas Rule of Evidence 503. Thus, the city may not withhold the remaining responsive information at issue on that basis.

In summary, the city may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. The city must release the remaining responsive 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 551419

Enc. Submitted documents

c: Requestor
(w/o enclosures)