



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

Ms. Lisa D. Mares
Counsel for the City of Keene
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-08200

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# 561869.

The City of Keene (the "city"), which you represent, received a request for the requestor's personnel file, specified billing statements, a specified agreement, and ten categories of information. You state the city has provided the requestor with some of the requested information. You claim some of the submitted information is privileged under Texas Rule of Evidence 503.¹ We have considered the submitted argument and reviewed the submitted information.

We note the submitted information consists of attorney fee bills that fall within the scope of section 552.022 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 the information is confidential under the Act or other law. *See* Gov't Code § 552.022(a)(16). We note 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. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address your claim under Texas Rule of Evidence 503 for the attorney fee bills.

¹Although you raise section 552.022 of the Government Code, this section is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022.

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 the client's representative and the client's lawyer or the lawyer's representative;
- (B) between the client's lawyer and the lawyer's representative;
- (C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;
- (D) between the client's representatives or between the client and the client's representative; 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).

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. *See* Open Records Decision No. 676 (2002). 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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You assert the portions of the submitted fee bills you have highlighted should be withheld under rule 503. You assert the submitted fee bills include privileged attorney-client communications between the city's attorneys and city officials and staff in their capacities as clients. You state the communications at issue were made for the purpose of the rendition

of legal services to the city. You indicate the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find you have established some of the information you have highlighted constitutes attorney-client communications under rule 503. Thus, with the exception of the information we have marked for release, the city may withhold the information you have highlighted within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, we find you have not demonstrated how the remaining information you have highlighted documents an attorney-client communication for purposes of rule 503. Accordingly, the remaining information you have highlighted may not be withheld on that basis. As you raise no further exceptions to disclosure, the city 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 561869

Enc. Submitted documents

c: Requestor
(w/o enclosures)