



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2015

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR2015-09517

Dear Ms. Nicholson:

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# 564022.

The City of Austin (the "city") received a request for billing records related to services rendered by Thompson & Knight, L.L.P., for a specified ethics complaint. You indicate the city will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you indicate some of the submitted information is not responsive to the instant request for information because it does not pertain to the specified ethics complaint. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

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.

Next, we note 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 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). Although you seek to withhold the submitted attorney fee bills under section 552.107(1) of the Government Code, section 552.107(1) is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 6 (2002) (Gov’t Code § 552.107(1) is not other law for purposes of Gov’t Code § 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the city may not withhold any of the information in the attorney fee bills under section 552.107(1) of the Government Code. The Texas Supreme Court has held, however, that the Texas Rules of Evidence are “other law” that makes 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 of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted information.

Texas Rule of Evidence 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 to facilitate 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. 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 state portions of the responsive information, which you have marked, consist of confidential communications between the attorneys for the city and the city's outside counsel. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the city and you inform us these communications have remained confidential. Based on your representations and our review of the information at issue, we find the district has established the information you marked constitutes privileged attorney-client communications under rule 503. Thus, the city may withhold the information you marked within the submitted attorney fee bills 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/cbz

Ref: ID# 564022

Enc. Submitted documents

c: Requestor
(w/o enclosures)