



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 4, 2015

Mr. Lance Vincent
Counsel for the City of East Mountain
Ritcheson, Lauffer & Vincent, P.C.
821 ESE Loop 323, Suite 530
Tyler, Texas 75701

OR2015-10976

Dear Mr. Vincent:

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# 566453.

The City of East Mountain (the "city"), which you represent, received a request for (1) all invoices submitted by a named individual during a specified time period, (2) a copy of the employment, engagement, or any other agreement with the named individual, and (3) any documents pertaining to the named individual being hired by the city council during a specified time period. The city claims portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code and privileged under Rule 503 of the Texas Rules of Evidence. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from an attorney representing the requestor. *See Gov't Code* § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we address the requestor's contention the city did not comply with section 552.301(b) of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request for information. *See id.* § 552.301(b). The requestor asserts the city received the request for information on March 11, 2015. You state the city received the request on March 12, 2015. The determination of the date the city

received the request for information is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, we must accept the city's representation that it received the request for information on March 12, 2015. Accordingly, the city's ten-business-day deadline was March 26, 2015. The envelope in which the city sent its request for a ruling bears a postmark of March 26, 2015. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we conclude the city complied with the requirements of section 552.301(b) of the Government Code.

Next, we note you have only submitted information responsive to the portion of the request seeking invoices submitted by a named individual during a specified time period. To the extent any additional information responsive to this request existed and was maintained by the city on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

We note the submitted 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 the information is confidential under the Act or other law. Gov't Code § 552.022(a)(16). Although the city raises section 552.107 of the Government Code for portions of the attorney fee bills, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold any of the information subject to section 552.022(a)(16) under section 552.107. However, 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.

Rule 503(b)(1) provides:

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).

Accordingly, 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. *See* Open Records Decision No. 676 (2002). 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 assert the submitted fee bills include privileged attorney-client communications between the city and an attorney retained by the city. You state the communications at issue were made for the purpose of the rendition of legal services to the city. The requestor contends a representative of the city waived the attorney-client privilege in his oral deposition as part of a lawsuit pertaining to the information at issue. Whether or not the city waived the attorney-client privilege is a question of fact. As stated above, this office is unable to resolve

disputes of fact in the open records ruling process. *See* ORDs 592, 552, 435. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion. *See* ORD 552 at 4. The city indicates these communications were intended to be confidential and have remained confidential. Based on the city's representations and our review of the information at issue, we find the city has established the information we have marked constitutes attorney-client communications under Rule 503. Thus, the city may withhold the information we have marked within the submitted attorney fee bills pursuant to Rule 503 of the Texas Rules of Evidence. However, we find the remaining information at issue either does not indicate it was communicated or consists of communications with parties whom the city has 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 any of the remaining information on that basis. As the city raises 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 566453

Enc. Submitted documents

c: Requestor
(w/o enclosures)