



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 30, 2015

Mr. Jaron L. Hudgins  
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Austin, Texas 78701

OR2015-13019

Dear Mr. Hudgins:

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# 569855.

The Agua Special Utility District (the "district"), which you represent, received a request for a video from a specified meeting and specified invoices, contracts, current bylaws, and changes made to the bylaws since August of 2014. The district states it has made some of the requested information available to the requestor, but claims some of the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rules of Evidence 503 and Texas Rule of Civil Procedure 192.5.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, you indicate some of the submitted information is not responsive to the request for information. We note some of the remaining information, which we have marked, is also not responsive. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release this information in response to this request.

We must next address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this

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<sup>1</sup>Although you also raise section 552.022 of the Government Code, we note this section is not an exception to disclosure under the Act.

office to decide whether requested information is excepted from public disclosure. 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. Gov't Code § 552.301(b). The district received the request for information on April 14, 2015. Thus, the district's ten-business-day deadline under section 552.301(b) was April 28, 2015. Although you timely raised section 552.107 and Texas Rule of Evidence 503, you did not raise Texas Rule of Civil Procedure 192.5 until May 5, 2015. Thus, the district failed to comply with the procedural requirements mandated by section 552.301(b) in raising rule 192.5.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of the claimed exceptions. *See generally id.* § 552.302. Rule 192.5 is discretionary in nature. It serves only to protect a governmental body's interests. *See* Open Records Decision No. 677 at 10 (2002) (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the district has waived the attorney work-product privilege under rule 192.5, and may not withhold any of the submitted information on that basis.

We next note the submitted responsive information consists of attorney fee bills that are subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(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). Section 552.107 of the Government Code section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *see also* ORD 522. Therefore, the district may not withhold any of the information at issue 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). Therefore, we will consider the district's assertion of the attorney-client privilege under Texas Rule of Evidence 503.

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

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 not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit 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 information contains privileged attorney-client communications between attorneys for and representatives of the district that were made for the purpose of facilitating the rendition of professional legal services to the district. You have identified some of the parties to the communications and state the communications were intended to

be and have remained confidential. Upon review, we find the district has established some of the submitted information, which we have marked, constitutes privileged attorney-client communications that the district may withhold under rule 503. However, we conclude you have failed to demonstrate the remaining information you have marked under rule 503 consists of privileged attorney client communications. We note an entry stating a memorandum or an e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Thus, we find you have failed to demonstrate the remaining information at issue was communicated and it does not reveal a client confidence. Therefore, the district may not withhold the remaining responsive information under rule 503 but, instead, must release it to the requestor.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 569855

Enc. Submitted documents

c: Requestor  
(w/o enclosures)