



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 13, 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

OR2015-21403

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# 582830.

The City of Keene (the "city"), which you represent, received a request for the billing records from the city's outside counsel during a specified time period. You state the city has released some information to the requestor. You claim some of the submitted information is privileged under Texas Rule of Evidence 503. We have considered the submitted argument and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2015-14417 (2015), this office ruled the city may withhold the marked information under Texas Rule of Evidence 503 and must release the remaining information. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2015-14417 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes

that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the submitted argument.

Next, we note, and you acknowledge, 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 of the attorney-client privilege under Texas Rule of Evidence 503 for the attorney fee bills.

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).

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 portions of the submitted fee bills you have marked consist of privileged attorney-client communications between attorneys for the city, city employees, city officials, and city consultants that were made for the purpose of providing legal services to the city. You state the communications at issue were made for the purpose of the rendition of legal services to the city. You state the communications at issue are confidential and have not been 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 marked 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 marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, we find you have not demonstrated the remaining information at issue documents an attorney-client communication for purposes of rule 503. 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. Accordingly, the remaining information at issue, which we have marked for release, may not be withheld on that basis.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2015-14417 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. With the exception of the information we have marked for release, the city may withhold the information you have marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. 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](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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 582830

Enc. Submitted documents

c: Requestor  
(w/o enclosures)