



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2016

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

OR2016-00202

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# 592914.

The City of Ferris (the "city"), which you represent, received a request for all invoices submitted to the city during a specified time period.¹ You state you have released some information. You claim 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.² We have considered the submitted arguments and reviewed the submitted representative sample of information.³

¹The submitted information demonstrates the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²Although you raise section 552.022 of the Government Code, this provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under the Act or other law. *See* Gov't Code § 552.022.

³We 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not constitute invoices submitted to the city. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information to the requestor.⁴

Next, we note the responsive information consists of attorney fee bills. You acknowledge, and we agree, the submitted attorney fee bills 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). You raise rule 503 of the Texas Rules of Evidence for the submitted attorney fee bills. The Texas Supreme Court has held the Texas Rules of Evidence are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted 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 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.

⁴As we are able to make this determination, we need not address your argument under section 552.107 of the Government Code against disclosure of the non-responsive information.

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).

When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). 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 id.* 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 portions of the submitted fee bills reflect privileged attorney-client communications between the city’s attorneys, city employees or officials, the city’s outside legal counsel, and a consultant for the city. You state the communications at issue were made for the purpose of the rendition of legal services to the city. You inform us the communications at issue were not disclosed to third parties, and confidentiality has not been waived. Based on your representations and our review of the information at issue, we find the city has established some of the information it highlighted constitutes attorney-client communications under rule 503. However, the remaining information the city highlighted either reveals a communication with a party who is not identified as privileged or is not a communication. 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. Therefore, we find you have failed to demonstrate the remaining information at issue consists of privileged communications for purposes of rule 503. Accordingly, we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information at issue, which we have marked for release. Thus, except for the information we have marked for release, the city may withhold the information it highlighted within the responsive attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. As you raise no further exceptions to disclosure, 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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive, slightly slanted style.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 592914

Enc. Submitted documents

c: Requestor
(w/o enclosures)