



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 20, 2016

Mr. Bill Flickinger  
Counsel for Senna Hills Municipal Utility District  
Willatt & Flickinger  
2001 North Lamar  
Austin, Texas 78705

OR2016-01408

Dear Mr. Flickinger:

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# 595186.

The Senna Hills Municipal Utility District (the "district"), which you represent, received a request for nine categories of information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> You indicate the district will comply with section 552.232 of the Government Code with respect to information the district has previously released to the requestor. *See* Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant request for information). We have considered the exception you claim and reviewed the submitted information.

Initially, the district states some of the responsive information was the subject of previous requests for information in response to which this office issued Open Records Letter Nos. 2015-25984 (2015) and 2015-26818 (2015). In Open Records Letter No. 2015-25984, we ruled the district may withhold some of the information at issue in that ruling under Texas Rule of Evidence 503, and must release the remaining information. In Open Records Letter No. 2015-26818, we ruled the district may withhold some of the information at issue in that

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

ruling under Texas Rule of Evidence 503 and section 552.107 of the Government Code, and must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based has changed, the district may continue to rely on Open Records Letter Nos. 2015-25984 and 2015-26818 as previous determinations and withhold or release the identical information in accordance with those rulings. *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). For the information that is not subject to Open Records Letter Nos. 2015-25984 and 2015-26818, we will consider the district's arguments against disclosure.

Next, 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 district raises section 552.107 for 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 6 (2002) (section 552.107 is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the district may not withhold the submitted information 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 district's assertion of the attorney-client privilege under Texas Rule of Evidence 503.

Texas Rule of Evidence 503(b)(1) 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* ORD 676. 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 should be withheld under rule 503. You indicate the attorney fee bills contain communications between attorneys for the district and district employees that were made for the purpose of facilitating the rendition of professional legal services. You do not indicate the district has waived the attorney-client privilege with regard to the communications. Upon review, we find the district may withhold the information we have marked under Texas Rule of Evidence 503. However, some of the communications are with individuals you have not demonstrated are privileged parties. Further, some of the information at issue does not document a communication. We note an entry stating a memorandum or an email was prepared or drafted does not demonstrate the document was communicated to the client. Thus, we find you have not demonstrated the remaining information constitutes privileged attorney-client communications for the purposes of Texas Rule of Evidence 503 and the district may not withhold the remaining information at issue on that basis. As no other exceptions against disclosure have been raised, the remaining information must be released.

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 'J. Behnke', written over a horizontal line.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 595186

Enc. Submitted documents

c: Requestor  
(w/o enclosures)