



January 14, 2015

Mr. Ron G. MacFarlane, Jr.
For the City of Cedar Hill
The MacFarlane Firm
3010 LBJ Freeway, Suite 1200
Dallas, Texas 75234

OR2015-00766

Dear Mr. MacFarlane:

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# 549979.

The City of Cedar Hill (the "city"), which you represent, received a request for documentation of legal fees paid to outside legal counsel between January 1, 2013, and December 31, 2013, related to the handling of open records requests. You claim portions of the submitted information are excepted from disclosure under Texas Rule of Evidence 503. We have considered your argument and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to open records requests. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

We note, and you acknowledge, the submitted information consists of attorney fee bills which 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). The Texas Supreme Court has held that 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 address your claim of the attorney-client privilege under Texas Rule of Evidence 503 for the information at issue.

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 a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; 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).

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. 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, no writ).

You assert portions of the responsive information are protected by the attorney-client privilege. You state the responsive information you have marked consists of privileged communications made in furtherance of professional legal services rendered to the city between city staff and attorneys for the city. You state these communications were intended to be and have remained confidential. Upon review, we find you have demonstrated some of the responsive information, which we have marked, consists of privileged attorney-client communications made in furtherance of professional legal services rendered to the city. Accordingly, the city may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. However, we find you have not demonstrated the remaining responsive information at issue consists of privileged attorney-client communications. Thus, the city may not withhold the remaining responsive information you have marked pursuant to rule 503 of the Texas Rules of Evidence and the city must release the remaining responsive information 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, 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,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 549979

Enc. Submitted documents

c: Requestor
(w/o enclosures)