



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 13, 2017

Mr. Oscar Cancino
Executive Director
Agua Special Utility District
P.O. Box 4379
Mission, Texas 78573-0075

OR2017-12941

Dear Mr. Cancino:

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# 661976.

The Agua Special Utility District (the "district") received a request for invoices, payments, and expense reports related to legal services during a specified time period. You claim the some of the submitted information is excepted from disclosure under sections 552.107 and 552.136 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, you have submitted information that is not responsive to the instant request for information because it does not relate to legal services. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

¹We note, although you also raise section 552.022 of the Government Code, section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022. Although the district does not raise section 552.136 of the Government Code in its brief, we understand it to raise this exception based on its markings.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(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)(3), (16). The submitted information includes invoices relating to the receipt or expenditure of funds by the district that are subject to section 552.022(a)(3) and attorney fee bills that are subject to section 552.022(a)(16) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (16). You seek to withhold the information subject to section 552.022(a)(16) under section 552.107 of the Government Code. However, this exception does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, the district may not withhold any portion of the submitted fee bills under section 552.107(1) of the Government Code. However, 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 address your claims of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted attorney fee bills. Further, as section 552.136 of the Government Code makes information confidential under the Act, we will consider its applicability to the information subject to section 552.022 of the Government Code.

Texas Rule of Evidence 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.

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, orig. proceeding).

You assert the submitted fee bills subject to section 552.022(a)(16) of the Government Code include privileged attorney-client communications between the attorneys for the district and district officials and staff in their capacities as clients. You state the communications at issue were made for the purpose of the rendition of legal services to the district. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review of the information at issue, we find the district has established the information we have marked constitutes attorney-client communications under rule 503. Thus, the district may withhold the information we marked pursuant to rule 503 of the Texas Rules of Evidence. However, we find the district has not demonstrated the remaining information at issue constitutes privileged attorney-client

communications for the purposes of Texas Rule of Evidence 503. Accordingly, the district may not withhold the remaining information at issue on that basis.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the district must withhold the checking account numbers you have marked under section 552.136 of the Government Code.

In summary, the district may withhold the information we marked under Texas Rule of Evidence 503. The district must withhold the checking account numbers you have marked under section 552.136 of the Government Code. The district 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, 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 661976

Enc. Submitted documents

c: Requestor
(w/o enclosures)