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ATTORNEY GENERAL OF TEXAS

June 13, 2017

Mr. Jaime J. Muñoz
Counsel for the La Joya Independent School District
Law Office of Jaime J. Muñoz
P.O. Box 47
San Juan, Texas 78589

OR2017-12995

Dear Mr. Muñoz:

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# 661561.

The La Joya Independent School District (the "district"), which you represent, received a request for any contract between the district and a named individual and all payment records from the district to the named individual during a specified time period. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, 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 is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). The submitted information contains an engagement letter that is subject to section 552.022(a)(3) and attorney fee bills that are subject to section 552.022(a)(16). Information subject to section 552.022(a)(3) or 552.022(a)(16) must be released unless such information is made confidential under the Act or other law. *See id.* § 552.022(a). You seek to withhold the submitted information under section 552.107 of the Government Code. However, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.107 of the Government Code. 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 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.

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* ORD 676 at 6-7. Thus, in order to withhold attorney-client privileged information from disclosure under rules 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 rules 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 rules 503(d). *See Pittsburgh Coming Corp. v. Caldwell*, S.W.2d 423,427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You contend the attorney-client privilege is applicable to the submitted information. We note section 552.022(a)(16) provides information “that is *in* a bill for attorney’s fees” is not excepted from disclosure unless the information is confidential under the Act or other law or protected by the attorney-client privilege. *See* Gov’t Code § 552.022(a)(16) (emphasis added). Thus, by its express language, section 552.022(a)(16) does not permit an attorney fee bill to be withheld in its entirety. *See also* Open Records Decisions Nos. 676 (attorney fee bill cannot be withheld in its entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill is excepted only to extent it reveals client confidences or attorney’s legal advice). Accordingly, we will determine whether the district may withhold information in the fee bills under rules 503.

You assert the engagement letter consists of and the fee bills include privileged attorney-client communications between the district and district counsel. You state the communications at issue were made for the purpose of the rendition of legal services to the district. The district states it has not waived the attorney-client privilege with regard to the communications. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the engagement letter. Accordingly, the district may withhold the engagement letter under 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 document was prepared or drafted does not demonstrate the document was communicated to the client. Accordingly, the remaining information may not be withheld on that basis. The district must release the fee bills in their entirety.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 661561

Enc. Submitted documents

c: Requestor
(w/o enclosures)