



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 16, 2017

Ms. Kristen Lee  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2017-13428

Dear Ms. Lee:

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# 662374 (File No. 17PIA0197).

The Harris County Auditor's Office (the "auditor's office") received a request for any and all fee bills, accounts of money spent, and fee arrangements for services rendered by a named firm to the Harris County District Attorney's Office (the "district attorney's office"). You claim some of the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure.<sup>1</sup> We have also received and considered comments from the district attorney's office. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the auditor's office failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for the requested information. *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301

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<sup>1</sup>Although you cite to section 552.103 of the Government Code in your brief, we understand you to raise the attorney work product privilege under section 552.111 of the Government Code based on the substance of your arguments.

results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Nonetheless, because the attorney-client privilege is a compelling reason to overcome the presumption of openness, we will consider the applicability of section 552.107(1) and Texas Rule of Evidence 503 to the submitted information. *See Gov't Code* § 552.302; *see also Paxton v. City of Dallas*, No. 15-0073 2017 WL 469597 (Tex. Feb. 3, 2017). However, we find you have failed to establish a compelling reason to address your remaining argument.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent 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 fee bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). We note portions of the submitted information consist of information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, and, thus, is subject to section 552.022(a)(3). Additionally, we note the remaining information consists of 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 this information under section 552.107 of the Government Code. However, section 552.107 is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 676 at 10-11 (2002) (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 information at issue 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" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider the your argument under rule 503 of the Texas Rules of Evidence.

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).

The district attorney's office states the auditor's office processes and reviews payments and other monetary transactions for Harris County and, thus, the information has been maintained as confidential among the district attorney's office, outside counsel, and representative of agents of the auditor's office. The auditor's office states the information subject to section 552.022(a)(3) of the Government Code, which we have marked, was communicated between the district attorney's office's outside counsel and employees of the district attorney's office for the purpose of the rendition of legal services to the district attorney's office. You also state this information has not been disclosed to third parties. Based on

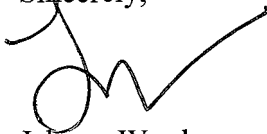
these representations and our review of the information at issue, we find the auditor's office has established the information at issue constitutes attorney-client communications under rule 503. Thus, the auditor's office may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence.

Additionally, you assert the submitted fee bills subject to section 552.022(a)(16) of the Government Code include privileged attorney-client communications between the district attorney's office's outside counsel and employees of the district attorney's office. You state the communications at issue were made for the purpose of the rendition of legal services to the district attorney's office. 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 auditor's office has established some of the information within the submitted attorney fee bills constitute attorney-client communications under rule 503. Thus, the auditor's office may withhold the information we marked under rule 503 of the Texas Rules of Evidence. Upon review, we find you have failed to establish any of the remaining information within the submitted attorney fee bills consists of privileged attorney-client communications. 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, the remaining information within the attorney fee bills may not be withheld under rule 503 of the Texas Rules of Evidence. As you raise no other exceptions to disclosure, 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,



Jahanna Ward  
Attorney  
Open Records Division

JW/bw

Ref: ID# 662374

Enc. Submitted documents

c: Requestor  
(w/o enclosures)