



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Mr. Felix Arambula III  
Counsel for the City of Converse  
The Arambula Law Firm, P.C.  
202 East Locust Street  
San Antonio, Texas 78212

OR2017-14500

Dear Mr. Arambula:

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# 663727.

The City of Converse (the "city"), which you represent, received a request for expense reports from the city mayor and city manager and itemized invoices from the city attorney during specified time periods. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we note you have only submitted information responsive to the portion of the request seeking itemized invoices from the city attorney during a specified time period. To the extent any information responsive to the remaining portions of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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). You seek to withhold the submitted

information under section 552.103. However, this section is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 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 552.103 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are “other law” that makes information expressly confidential for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Thus, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted information.

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* Open Records Decision No. 676 at 6-7 (2002). 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 indicate the information you have marked consists of privileged attorney-client communications between attorneys for the city and city staff in their capacities as clients. You represent the communications at issue were made for the purpose of the rendition of legal services to the city. You also represent the city has not waived the attorney-client privilege with regard to the communications. Based on your representations and our review of the submitted information, we find you have established most of the information you have marked constitutes privileged attorney-client communications under rule 503. Thus, except for the information we have marked for release, the city may withhold the information you have marked pursuant to rule 503 of the Texas Rules of Evidence. However, we find you have failed to demonstrate any portion of the remaining information at issue consists of privileged attorney-client communications. We note an entry stating a memorandum or an email was prepared or drafted does not demonstrate the document was communicated to the client. Accordingly, no portion of the remaining information may be withheld under rule 503. The city 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](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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/tdw

Ref: ID# 663727

Enc. Submitted documents

c: Requestor  
(w/o enclosures)