



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 29, 2017

Ms. Rebecca S. Hayward  
Counsel for the City of La Feria  
Denton Navarro Rocha Bernal Hyde & Zech, P.C.  
701 East Harrison, Suite 100  
Harlingen, Texas 78550-9165

OR2017-19732

Dear Ms. Hayward:

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# 673478.

The City of La Feria (the "city"), which you represent, received a request for invoices received from and checks issued to a specified third party during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.103, 552.107, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from requestor. *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).

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

*Id.* § 552.022(a)(3), (16). The submitted information contains information in an account, contract, or voucher relating to the receipt or expenditure of funds by the city that is subject to section 552.022(a)(3). The submitted information also contains attorney fee bills that are subject to section 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under sections 552.103 and 552.107(1) of the Government Code. However, these exceptions are discretionary and do 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 Gov't Code § 552.103); *see also* 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 city may not withhold the submitted information under section 552.103 or section 552.107(1). 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 information at issue. Further, because section 552.136 of the Government Code makes information confidential under the Act, we will consider your arguments under this exception.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides:

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 not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that 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 that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state portions of the submitted information consist of communications involving city attorneys, city representatives, and other city employees and officials. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the city and these communications have remained confidential. Upon review, we find you have established some of the information you have marked constitutes privileged attorney-client communications under rule 503. Thus, with the exception of the information we have marked for release, the city may withhold the information you have marked under Texas Rule of Evidence 503. However, we find you have not demonstrated the remaining information at issue constitutes privileged attorney-client communications for the purposes of Texas Rule of Evidence 503. 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. Accordingly, the city may not withhold the remaining information at issue on that basis.

Section 552.136 of the Government Code provides, "Notwithstanding 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 a portion of the information you have marked under section 552.136 consists of routing and bank account numbers. However, we note check numbers are not access device numbers for

purposes of section 552.136 of the Government Code. Furthermore, we find you have failed to demonstrate the federal tax identification number you have marked consists of an access device number for purposes of section 552.136 of the Government Code. Accordingly, the city must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code. However, we find you have not demonstrated the remaining information you have marked consists of access device numbers for purposes of section 552.136. Accordingly, the city may not withhold the remaining information you have marked under section 552.136 of the Government Code.

In summary, with the exception of the information we have marked for release, the city may withhold the information you have marked under Texas Rule of Evidence 503. The city must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code. 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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 673478

Enc. Submitted documents

c: Requestor  
(w/o enclosures)