



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 7, 2017

Mr. Augustin Rivera, Jr.  
General Counsel  
Del Mar College District  
101 Baldwin Boulevard  
Corpus Christi, Texas 78404-3897

OR2017-20492

Dear Mr. Rivera:

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# 678703.

The Del Mar College District (the "district") received a request for information pertaining to specified investigations conducted over the previous five years. The district states it is making some of the requested information available to the requestor, but claims some of the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information consists of an attorney fee bill that is subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(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)(16). Section 552.107 of the Government Code section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold any of the submitted information under section 552.107. 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). Therefore, we will consider the assertion of the attorney-client privilege under rule 503 for this information.

Texas Rule of Evidence 503(b)(1) provides the following:

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

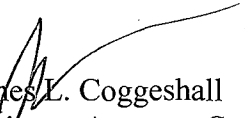
it was made in furtherance of the rendition of professional legal services to the client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the communication 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).

The district asserts the information it has marked consists of confidential communications between attorneys for and employees of the district that were made for the purpose of rendering professional legal advice. It also asserts the communications were intended to be confidential and their confidentiality has been maintained. Upon review, we find the district has demonstrated the applicability of the attorney-client privilege to this information. Therefore, the district may withhold the information it has marked under Texas Rule of Evidence 503. 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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 678703

Enc. Submitted documents

c: Requestor  
(w/o enclosures)