



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 12, 2017

Ms. Diane Cockrell  
City Secretary/Records Manager  
City of Decatur  
P.O. Box 1299  
Decatur, Texas 76234

OR2017-20829

Dear Ms. Cockrell:

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# 675140.

The Decatur Police Department (the "department") received a request for specified correspondence between specified City of Decatur (the "city") employees and officials pertaining to a named employee. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under pursuant to rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2017-08759 (2017). In that ruling, we determined the city may withhold the submitted information under section 552.107(1) of the Government Code. You state the law, facts, or circumstances on which the prior ruling was based have not changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter No. 2017-08759 as a previous determination, and withhold the previously ruled upon information in accordance with it. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists

where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the exception you raise.

Next, we note some of 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 information at issue contains an invoice that is subject to section 552.022(a)(3) and an attorney fee bill that is subject to section 552.022(a)(16). Information subject to section 552.022(a)(3) or section 552.022(a)(16) must be released unless such information is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (16). You seek to withhold the submitted 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 your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted information subject to 552.022. We will also address your argument for the information not subject to 552.022.

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).

You assert the submitted attorney fee bill must be withheld in its entirety under rule 503. However, section 552.022(a)(16) of the Government Code provides information "that is *in* a bill for attorney's fees" is not excepted from required disclosure unless it is confidential under other law or privileged under the attorney-client privilege. *See* Gov't Code § 552.022(a)(16) (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. *See also* Open Records Decision Nos. 676 (attorney fee bill cannot be withheld in 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 excepted only to extent information reveals client confidences or attorney's legal advice). Accordingly, the department may not withhold the entirety of the submitted fee bill under Texas Rule of Evidence 503.

The department asserts the submitted fee bill subject to section 552.022(a)(16) of the Government Code and the invoice subject to 552.022(a)(3) include privileged attorney-client communications between the city's outside counsel and attorneys and employees of the city. You state the communications at issue were made for the purpose of the rendition of legal services to the city. You state the communications at issue have not been, and were not intended to be, disclosed to third parties. Upon review of the information at issue, we find the department has established some of the information within the attorney fee bill constitutes attorney-client communications under Rule 503. Thus, the department may withhold the information we marked under rule 503 of the Texas Rules of Evidence. However, we find you have failed to establish the remaining information 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 may not be withheld under rule 503 of the Texas Rules of Evidence.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding 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."<sup>1</sup> Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the department must withhold the information we marked under section 552.136 of the Government Code.

The department claims section 552.107 of the Government Code for the information not subject to section 552.022. Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed for rule 503. 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. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You inform us the information not subject to section 552.022 consists of communications between outside counsel for the city and attorneys and employees for the city. You argue the communications at issue were made for the purpose of the rendition of legal services to the city and were not intended to be disclosed to third parties. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information not subject section 552.022. Accordingly, the department may withhold

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

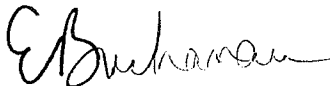
the information not subject to section 552.022 under section 552.107 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the department may continue to rely on Open Records Letter No. 2017-08759 as a previous determination, and withhold the previously ruled upon information in accordance with it. The department may withhold the information we have marked under rule 503 of the Texas Rules of Evidence. The department must withhold the information we marked under section 552.136 of the Government Code. The department may withhold the information not subject to section 552.022 under section 552.107 of the Government Code. The department 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,



Emily Buchanan  
Attorney  
Open Records Division

EB/gw

Ref: ID# 675140

Enc. Submitted documents

c: Requestor  
(w/o enclosures)