



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2019

Ms. Erin Higginbotham
Counsel for Port O'Connor Improvement District
Bojorquez Law Firm, PC
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2019-02872

Dear Ms. Higginbotham:

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# 748288.

The Port O'Connor Improvement District (the "district"), which you represent, received a request for billing information from a named law firm during a specified period of time. You claim some of the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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 expressly confidential under the Act or other law. Gov't Code § 552.022(a)(16). The district seeks to withhold portions of the submitted information under section 552.107(1) of the Government Code. However, section 552.107(1) is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client

¹Although the district also raises section 552.101 of the Government Code, the district has not provided any arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, the district may not withhold any portion of the submitted fee bills under 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 the district’s claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information it has marked.

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). *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).

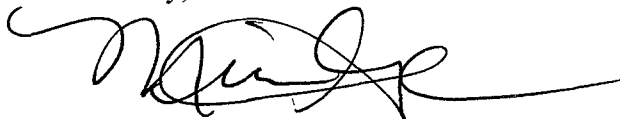
The district asserts the portions of the submitted fee bills it has marked should be withheld under rule 503. The district states the submitted fee bills include privileged attorney-client communications between attorneys for the district and district officials and staff in their capacities as clients. The district explains the communications at issue were made for the purpose of the rendition of legal services to the district. The district states the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on these representations and our review of the information at issue, we find the district has established most of the information at issue constitutes attorney-client communications under rule 503.

However, some of the information at issue, which we have marked for release, does not document communications for purposes of rule 503 and the district may not withhold this information under rule 503 of the Texas Rules of Evidence. Accordingly, with the exception of the information we have marked for release, the district may withhold the information you have marked under rule 503 of the Texas Rules of Evidence. 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, 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,



Michelle Garza
Assistant Attorney General
Open Records Division

MG/som

Ref: ID# 748288

Enc. Submitted documents

c: Requestor
(w/o enclosures)