



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2019

Mr. Jeffrey L. Moore
Counsel for City of Quinlan
Brown & Hofmeister, L. L. P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-12960

Dear Mr. Moore:

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# 765402.

The City of Quinlan (the "city"), which you represent, received a request for the city's attorney fee bills for January 2019 and a second request from the same requestor for the city's attorney fee bills for February 2019.¹ You claim portions of the submitted information are excepted from disclosure under Texas Rule of Evidence 503.² We have considered your arguments and reviewed the submitted information.

Section 552.022(a)(16) of the Government Code provides for the 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 it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(16). As you acknowledge, the submitted fee bills are subject to section 552.022(a)(16) and must be released unless they are confidential under the Act or other law. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your arguments under Texas Rule of Evidence 503.

¹As you have not submitted the second request for our review, we take our description from your brief to our office.

²We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office with respect to the second request for information. See Gov't Code § 552.301(e). Nonetheless, because the attorney-client privilege is a compelling reason to overcome the presumption of openness, we will consider the applicability of Texas Rule of Evidence 503 to the submitted information. See *id.* § 552.302; see also *Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017).

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 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).

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). Accordingly, 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 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 id.* 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); *see also Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding).

You have marked information within the fee bills that you seek to withhold as attorney-client privileged communications under rule 503. You state these communications were made for the purpose of facilitating the rendition of professional legal services to the city and were intended to be, and have remained, confidential. Based on your representations and our review, we conclude the city may withhold the information you have marked under Texas Rule of Evidence 503. As no further exceptions to disclosure have been raised, 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, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/jxd

Ref: ID# 765402

Enc. Submitted documents

c: Requestor
(w/o enclosures)