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ATTORNEY GENERAL OF TEXAS

June 21, 2019

Mr. Joey Moore
Counsel for the Tarrant Appraisal District
Walsh Gallegos Trevino Russo & Kyle P.C.
P.O. Box 2156
Austin, Texas 78768

OR2019-16990

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# 771641.

The Tarrant Appraisal District (the "district"), which you represent, received a request for information pertaining to invoices for attorney fees in regards to a specified matter. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information consists of attorney fee bills that are 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 is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 2 (2002) (section 552.107 is not other law for purposes of section 552.022), 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” 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 Texas Rule of Evidence 503.

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 privilege 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 under rule 503 consists of a confidential communication between attorneys for and employees or officials of the district that was made for the purpose of rendering professional legal advice. The district also asserts the communication was intended to be confidential and its confidentiality has been maintained. Upon review, we find the district has established some of the information at issue, which we have marked, consists of privileged attorney-client communications that the district may withhold under rule 503. However, we find the district has failed to demonstrate the remaining information at issue 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. Thus, we find the district may not withhold any of the remaining information at issue under rule 503. Therefore, the district may withhold the information we have 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, 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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 771641

Enc. Submitted documents

c: Requestor
(w/o enclosures)