



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 2, 2019

Mr. James McKibben
Counsel for the Port Aransas Independent School District
McKibben, Martinez, Jarvis & Wood, L.L.P.
555 North Carancahua Street, Suite 1100
Corpus Christi, Texas 78401-0841

OR2019-27657

Dear Mr. McKibben:

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# 789168.

The Port Aransas Independent School District (the "district"), which you represent, received a request for all time and expense records pertaining to specified litigation. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially we note 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 that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(3), (16). The submitted information consists of invoices that are subject to section 552.022(a)(3) and attorney fee bills that are 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). The district seeks to withhold the submitted information under sections 552.103 and 552.107(1) of the Government Code. However, these sections are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* 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). As such, the district may not withhold any portion of the submitted information under section 552.103 or section 552.107(1) of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence is “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 assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted information.

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 portions of the submitted fee bills should be withheld under rule 503. The district asserts the submitted fee bills include privileged attorney-client communications between counsel for the district, district employees, and co-defendants that were made in furtherance of the rendition of professional legal services to the district. You inform us that the district has a common interest in the specified litigation with these co-defendants. The district states these communications were intended to be, and have remained, confidential. Based on these representations and our review of the information at issue, we find the district has established the information we marked constitutes privileged attorney-client communications under rule 503. Thus, the district may withhold the information we marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence.¹ However, we find the district has failed to demonstrate the remaining information consists of privileged attorney-client communications. Accordingly, the district may not withhold any portion of the remaining information under rule 503. The district must release the remaining information.

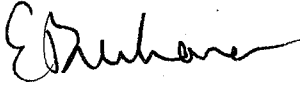
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

¹As our ruling is dispositive, we need not address the district's remaining argument against disclosure of this information.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Buchanan". The signature is fluid and cursive, with a large initial "E" and a long, sweeping underline.

Emily Buchanan
Assistant Attorney General
Open Records Division

EBO/gw

Ref: ID# 789168

Enc. Submitted documents

c: Requestor
(w/o enclosures)