



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 31, 2019

Mr. Marc J. Schnall
Counsel for the City of Castle Hills
Langley & Banack, Incorporated
745 East Mulberry Street, Suite 700
San Antonio, Texas 78212

OR2019-30788

Dear Mr. Schnall:

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# 794426.

The City of Castle Hills (the "city"), which you represent, received a request for attorney fee bills for a specified time period. You claim some of the submitted information is privileged under Texas Rule of Evidence 503. We have considered your argument and reviewed the submitted information.

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:

...

(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). The submitted information consists of attorney fee bills subject to section 552.022(a)(16). Thus, the submitted information must be released unless it is made confidential under the Act or other law. *See id.* 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 your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

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 portions of the submitted fee bills you marked are privileged under rule 503. You assert the submitted fee bills include privileged attorney-client communications between the city's attorneys and city officials and staff in their capacities as clients made for the purpose of the rendition of legal services to the city. You state the communications

at issue were intended to be and have remained confidential. Based on these representations and our review of the information at issue, we find, with the exception of the information we marked for release, you established the information you marked constitutes privileged attorney-client communications under rule 503. Thus, with the exception of the information we marked for release, the city may withhold the information you marked within the submitted attorney fee bills pursuant to rule 503 of the Texas Rules of Evidence. However, upon review, we find the remaining information at issue either does not document communications for purposes of rule 503 or documents communications with non-privileged parties. We note an entry stating that a memorandum, letter, or an e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Thus, we find you failed to demonstrate the remaining information at issue was communicated and it does not reveal a client confidence. Accordingly, the city may not withhold any portion of the remaining information at issue under rule 503. 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 <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 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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/jxd

Ref: ID# 794426

Enc. Submitted documents

c: Requestor
(w/o enclosures)