



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 29, 2020

Mr. Jeffrey L. Moore  
Counsel for Cisco Economic Development Corporation  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2020-12124

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# 824981.

The Cisco Economic Development Corporation and the Cisco Community Development Corporation (the "corporation"), which you represent, received a request for information pertaining to specified grants and loans during a specified time period, communications with named individuals, specified projects during a specified time period, invoices pertaining to specified agreements, and appraisals for properties sold.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.107 and 552.136 of the Government Code, as well as privileged under Texas Rule of Evidence 503. We have considered the submitted arguments and reviewed the submitted information.

The submitted information includes information that is subject to section 552.022 of the Government Code. Section 552.022(a) 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:

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<sup>1</sup> You state the district sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code. See Gov't Code § 552.2615.

(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 contains checks relating to the expenditure of public funds by the corporation that are subject to section 552.022(a)(3) and attorney fee bills that are subject to section 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *See id.* §552.022(a)(3), (16). The Texas Supreme Court has held the Texas Rules of Evidence are "other law" that make information expressly confidential for purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider the assertion of the attorney-client privilege under rule 503 for the information subject to section 552.022(a)(16). In addition, because section 552.136 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception for the information subject to section 552.022(a)(3). We will also consider your arguments against disclosure of the remaining information not subject to section 552.022(a)(16) of the Government Code.

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 privileged 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 at 6-7 (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 [14<sup>th</sup> Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You explain the information at issue consists of communications between corporation officers and employees and attorneys for the corporation that were made for the purpose of providing legal services to the corporation. You state the communications were intended to be and have remained confidential. Based on your representations and our review of the information at issue, we find you have established the information at issue constitutes privileged attorney-client communications under rule 503. Accordingly, the corporation may withhold the information you marked under Texas Rule of Evidence 503.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov’t Code § 552.107(1). The elements of privilege under section 552.107(1) are the same as those discussed above for Texas Rule of Evidence 503. 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. ORD 676 at 6-7. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie*, 922 S.W.2d at 923.

You state some of the remaining information consists of communications involving attorneys for the corporation and corporation officers and employees in their capacities as clients. You state these communications were made in furtherance of the rendition of professional legal services to the corporation. You further state these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the corporation has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the corporation may withhold the information you marked under section 552.107(1) of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code

§ 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the corporation must withhold the bank routing and account numbers you marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>2</sup> *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the corporation must withhold the personal e-mail address in the remaining information under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the corporation may withhold the information you marked under Texas Rule of Evidence 503. The corporation may withhold the information you marked under section 552.107(1) of the Government Code. The corporation must withhold the bank routing and account numbers you marked under section 552.136 of the Government Code. The corporation must withhold the personal e-mail address under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The corporation 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,

Pearlie Gault  
Attorney  
Open Records Division

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)