



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2020

Ms. Sandra Passailaigue
City Secretary
City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238-2399

OR2020-17399A

Dear Ms. Passailaigue:

Our office issued Open Records Letter No. 2020-17399 (2020) on July 14, 2020. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on July 14, 2020. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Your request was assigned ID# 862280 (ORR# 042420-B).

The City of Leon Valley (the "city") received a request for billing statements pertaining to a specified law firm during a defined period of time. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information includes billing statements that are publicly available on the city's website. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007, .021; Open Records Decision No. 463 at 1-2 (1987). As noted above, information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public,

¹ Although you also raise sections 552.101 and 552.111 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3, 490 at 2 (1988). Although you raise section 552.107 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not prohibit the release of information or make information confidential under the Act. *See* 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). Accordingly, the city may not now withhold the previously released information, which we marked, under section 552.107 of the Government Code. However, we will consider your argument under section 552.107 for the remaining information.

We note some of the remaining information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-23231 (2019). There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the remaining information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2019-23231 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the remaining information is not subject to the prior ruling, we will address your arguments.

We note the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(a) 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). The remaining information consists of attorney fee bills subject to section 552.022(a)(16) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *Id.* Although you seek to withhold this information at issue under sections 552.107 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 6, 665 at 2 n.5, 663 at 5, 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the city may not withhold the information at issue under section

552.107 or section 552.108 of the Government Code. However, 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. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information subject to section 552.022 of the Government Code. Further, as section 552.137 of the Government Code can make information confidential under the Act, we will address the applicability of this section to the submitted information.²

Texas Rule of Evidence 503(b)(1) provides:

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* ORD 676 at 6-7. 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

² 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).

exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 922 (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).

You seek to withhold the remaining attorney fee bills in their entirety under rule 503. However, section 552.022(a)(16) of the Government Code provides information “that is *in a bill for attorney’s fees*” is not excepted from required disclosure unless it is confidential under other law or privileged under the attorney-client privilege. See Gov’t Code § 552.022(a)(16) (emphasis added). This provision, by its express language, does not permit the entirety of an attorney fee bill to be withheld. See also Open Records Decision Nos. 676 (attorney fee bill cannot be withheld in entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill excepted only to extent information reveals client confidences or attorney’s legal advice). Accordingly, the city may not withhold the remaining fee bills in their entirety under Texas Rule of Evidence 503.

You represent the information at issue consists of communications between outside counsel for the city, city employees, and city officials that were made for the purpose of facilitating the rendition of professional legal services to the city. Further, you state the communications at issue were intended to be and have remained confidential. Based upon your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to some of the information at issue. Accordingly, the city may withhold the information we marked within the remaining attorney fee bills under rule 503 of the Texas Rules of Evidence. However, the remaining information in the attorney fee bills either does not document communications for purposes of rule 503 or documents communications with non-privileged parties. We note an entry stating a memorandum or e-mail was prepared, drafted, or reviewed does not demonstrate the document was communicated to the client. Thus, we find you failed to demonstrate the remaining information in the attorney fee bills consists of privilege attorney-client communications. Accordingly, the city may not withhold the remaining information in the attorney fee bills under Texas Rule of Evidence 503.

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). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be the type specifically excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to their public disclosure.

In summary, the city must release the information we marked pursuant to section 552.007 of the Government Code. For the remaining information that is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2019-23231 as a previous determination and withhold or

release the identical information in accordance with that ruling. The city may withhold the information we marked in the attorney fee bills under rule 503 of the Texas Rules of Evidence. The city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to their public disclosure. 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/eb

Ref: ID# 862280

Enc. Submitted documents

c: Requestor
(w/o enclosures)