



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 23, 2020

Mr. Augustin Rivera, Jr.
General Counsel
Del Mar College District
101 Baldwin Boulevard
Corpus Christi, Texas 78404-3897

OR2020-18432

Dear Ms. Rivera:

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# 839457.

The Del Mar College District (the "district") received a request for invoices for legal services.¹ The district states it is releasing some of the requested information. The district claims some of the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Rule 503 of the Texas Rules of Evidence.² We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information consists of an attorney fee bill that is subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege" unless the information is expressly

¹ As the district has not submitted a copy of the request for information, we take our description from the district's brief.

² We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. See Gov't Code § 552.301(e). Nonetheless, because the exception and privilege the district claims can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. See *id.* §§ 552.007, .302, .352. Further, although the district also raises section 552.101 of the Government Code, the district has not provided any argument to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

confidential under the Act or other law. Gov't Code § 552.022(a)(16). The district seeks to withhold some of the information at issue under section 552.107(1) of the Government Code. However, section 552.107(1) is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, the district may not withhold any portion of the submitted fee bill under section 552.107(1). However, 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 the district’s claim of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the submitted attorney fee bill.

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).

The district asserts portions of the submitted fee bill, which it marked, should be withheld under rule 503. The district states the marked portions of the fee bill consist of privileged attorney-client communications between the district's attorneys and district officials and staff in their capacities as clients. The district explains the communications at issue were made for the purpose of the rendition of legal services to the district. The district states the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on these representations and our review of the information at issue, we find the district has established the information at issue constitutes privileged attorney-client communications under rule 503. Thus, the district may withhold the information it marked within the submitted attorney fee bill pursuant to rule 503 of the Texas Rules of Evidence. 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 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 839457

Enc. Submitted documents

c: Requestor
(w/o enclosures)