



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 25, 2022

Mr. Peter T. Gregg  
Counsel for Wintergarden Groundwater Conservation District  
Dubois, Bryant & Campbell, L.L.P.  
303 Colorado, Suite 2300  
Austin, TX 78701

OR2022-05805

Dear Mr. Gregg:

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# 930865.

The Wintergarden Groundwater Conservation District (the "district"), which you represent, received a request for two specified contracts and specified communications. You claim the submitted information is privileged under rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your argument and reviewed the submitted information.

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<sup>1</sup> Although you also raise section 552.022 of the Government Code, we note section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022. Further, we note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See id.* § 552.301(b), (e). Nonetheless, because the attorney-client privilege can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352; *see also Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017).

Initially, we note the district has only submitted one contract for our review. To the extent information responsive to the remainder of the request existed on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

The submitted information is subject to section 552.022(a) of the Government Code, which provides, in relevant part:

[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[.]

Gov't Code § 552.022(a)(3). The submitted information consists of information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body that is subject to section 552.022(a)(3) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* As you acknowledge, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). Thus, we will consider your claim under Texas Rule of Evidence 503 for the submitted information.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 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).

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. *See* Open Records Decision No. 676 (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).

You state the submitted information consists of a client engagement letter and argue it is protected from disclosure by the attorney-client privilege. Based upon your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the submitted information. Accordingly, the district may withhold the submitted information under rule 503 of the Texas Rules of Evidence.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/jxd

Ref: ID# 930865

c: Requestor