



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 4, 2022

Mr. Mark P. Haby  
District Attorney  
Medina County  
1403 Avenue North  
Hondo, Texas 78861

OR2022-06495

Dear Mr. Haby:

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# 933131.

The Medina County Criminal District Attorney's Office and the Office of the Medina County Judge (collectively, the "county") each received a request from the same requestor for information pertaining to the county's legal representation. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) 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:

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(16) information that is in a bill for attorney's fees and is not privileged under the attorney-client privilege[.]

*Id.* § 552.022(a)(16). The submitted information consists of attorney fee bills that are subject to section 552.022(a)(16) of the Government Code. The county must release this information pursuant to section 552.022(a)(16) of the Government Code unless it is made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for the submitted information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive litigation exception, section 552.103); 522 at 4 (1989) (discretionary exceptions in general). Therefore, no portion of the information subject to section 552.022 may be withheld under section 552.103 of the Government Code. 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). Thus, we will consider your assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the submitted information which is subject to section 552.022 of the Government Code.

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 portions of the attorney fee bills subject to section 552.022(a)(16) of the Government Code should be withheld under Texas Rule of Evidence 503. You state the information at issue consists of privileged attorney-client communications between the county's retained attorneys and the county's representatives in their capacities as clients. You also state the communications at issue were made for the purpose of the rendition of legal services to the county. Further, you state the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on your representations and our review, we find you have established some of the information at issue constitutes attorney-client communications under rule 503. Accordingly, the county may withhold the information we marked under rule 503 of the Texas Rules of Evidence. However, we note the remaining information at issue either does not document a communication or documents a communication with a non-privileged party. We note an entry stating a memorandum or e-mail was prepared or drafted does not demonstrate the document was communicated to the client. Thus, we find the county has failed to demonstrate the remaining information at issue consists of privileged attorney client communications. Therefore, the county may not withhold any portion of the remaining information under rule 503.

Section 552.136(b) 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.”<sup>1</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the county must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code.

In summary, the county may withhold the information we marked under rule 503 of the Texas Rules of Evidence. The county must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code. The county must release the remaining information.

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<sup>1</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).

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,

Joseph Hoggatt  
Assistant Attorney General  
Open Records Division

JWH/jxd

Ref: ID# 933131

Enc. Submitted documents

c: Requestor  
(w/o enclosures)