



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 8, 2022

Ms. Meagan Scott
Assistant General Counsel
Harris County
500 Jefferson Street, Suite 600
Houston, Texas 77002

OR2022-06880

Dear Ms. Scott:

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# 932957 (HCDAO Tracking No. 2021.12-0025).

The Harris County District Attorney's Office (the "district attorney's office") received a request for several categories of information pertaining to services provided to the district attorney's office by a named individual during a specified time period. The district attorney's office claims some of the submitted information is excepted from disclosure under Texas Rule of Evidence 503. We have considered the district attorney's office's argument and reviewed the submitted information.

Initially, we note some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2017-13864 (2017) and 2017-19425 (2017). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office may rely on Open Records Letter Nos. 2017-13864 and 2017-19425 as previous determinations and withhold or release the identical information in accordance with those rulings. *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 that information is or is not excepted from disclosure).

Next, we note, and the district attorney's office acknowledges, the submitted information consists of attorney-fee bills that are 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 confidential under the Act or other law. Gov't Code § 552.022(a)(16). The Texas Supreme Court has held the Texas Rules of Evidence are "other law" for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will address the district attorney's office's assertion of the attorney-client privilege under Texas Rule of Evidence 503 for the information at issue.

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 attorney’s office asserts the portions of the submitted fee bills it marked should be withheld under rule 503. The district attorney’s office further asserts the fee bills include privileged attorney-client communications between its attorneys, outside counsel, and employees that were made in furtherance of the rendition of professional legal services to the district attorney’s office. The district attorney’s office states these communications were intended to be, and have remained, confidential. Based upon these representations and our review, we find the district attorney’s office has established some of the information at issue constitutes attorney-client communications under rule 503. Accordingly, the district attorney’s office may withhold the information we have marked pursuant to Texas Rule of Evidence 503. However, we note some entries have been shared with individuals the district attorney’s office has not demonstrated are privileged parties. Further, 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 district attorney’s office has failed to demonstrate the remaining information at issue consists of privileged attorney-client communications. Therefore, the district attorney’s office may not withhold the remaining information at issue under rule 503.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the district attorney’s office may rely on Open Records Letter Nos. 2017-13864 and 2017-19425 as previous determinations and withhold or release the identical information in accordance with those rulings. The district attorney’s office may withhold the information we have marked pursuant to Texas Rule of Evidence 503. The district attorney’s office 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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 932957

Enc. Submitted documents

c: Requestor
(w/o enclosures)