



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 22, 2022

Ms. Lauren Downey  
Public Information Coordinator  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2022-08260

Dear Ms. Downey:

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# 938228 (PIR# R011262).

The Office of the Attorney General (the "OAG") received a request for billing and accounting information pertaining to two specified law firms during a stated time period. The OAG states it will release some information. The OAG claims some of the submitted information is privileged under Texas Rule of Evidence 503. We have considered the submitted argument and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, the OAG acknowledges the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(16) provides for the 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 it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(16). The submitted information consists of attorney fee bills subject to section 552.022(a)(16). This information must be released unless it is made confidential under the Act or other law. *Id.* The Texas Supreme Court has held the Texas

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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 that those records contain substantially different types of information than that submitted to this office.

Rules of Evidence are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider the OAG’s assertion of the attorney-client privilege under Texas Rule of Evidence 503.

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. Open Records Decision No. 676 at 6-7 (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, 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).

The OAG asserts the information it marked constitutes privileged attorney-client communications between the OAG's outside counsel and the OAG that were made for the purpose of the rendition of legal services to the OAG. The OAG states the communications at issue have not been, and were not intended to be, disclosed to third parties. Based upon the OAG's representations and our review, we find the OAG has established the information at issue constitutes attorney-client communications under rule 503. Accordingly, the OAG may withhold the information it marked pursuant to rule 503. The OAG 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/eb

Ref: ID# 938228

Enc. Submitted documents

c: Requestor  
(w/o enclosures)