



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2022

Mr. Jaron L. Hudgins
Counsel for the Agua Special Utility District
Beatty, Navarre & Strama, P.C.
901 South Mopac Expressway Building 1, Suite 200
Austin, Texas 78746

OR2022-17808

Dear Mr. Hudgins:

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# 954661.

The Agua Special Utility District (the "district"), which you represent, received a request for invoices submitted by a named law firm during a specified period of time. You claim the submitted information is privileged under rule 503 of the Texas Rules of Evidence. We have considered your argument and reviewed the submitted information.

Initially, we note and you acknowledge, the submitted information consists of attorney fee bills that fall within the scope of section 552.022 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. *See* Gov't Code § 522.022(a)(16). As you acknowledge, the Texas Supreme Court has held, however, that the Texas Rules of Evidence are "other law" that makes information expressly confidential for purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will address your claim under Texas Rule of Evidence 503 for the information at issue.

Texas Rule of Evidence 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).

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. *See* ORD 676. 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); *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).

You state the information consists of privileged attorney-client communications between attorneys for the district, attorney representatives, and district employees and officials in their capacities as clients that were made for the purpose of facilitating legal counsel to the district. You also state these communications were intended to be confidential and have remained confidential. Based upon your representations and our review, we find the district has demonstrated the applicability of the attorney-client privilege to portions of the information at issue. Accordingly, the district may withhold the information we marked under rule 503 of the Texas Rules of Evidence. However, we find the remaining information at issue does not document a communication or it has been shared with an individual you have not demonstrated as a privileged party for purposes of rule 503. Thus,

we find you have failed to demonstrate the applicability of the attorney-client privilege to the remaining information, and it may not be withheld under rule 503 of the Texas Rules of Evidence. The remaining information must be released.

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,

Cesar Mata
Attorney
Open Records Division

CM/jxd

Ref: ID# 954661

Enc. Submitted documents

c: Requestor
(w/o enclosures)