



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2022

Mr. Zac Hatcher
Assistant District Attorney
Wichita County
900 7th Street, Room 352
Wichita, Texas 76301

OR2022-29670

Dear Mr. Hatcher:

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# 973625 (ORR.03005).

The Wichita County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to the retention of a named individual, including contracts and payment documentation. You indicate the district attorney's office will withhold access device numbers pursuant to section 552.136 of the Government Code.¹ The district attorney's office claims some of the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered your claimed exceptions and reviewed the submitted information.

Initially, we note the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹ Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

...

(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 information you have marked consists of information in an account, voucher, or contract relating to the receipt or expenditure of public funds that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* The district attorney's office seeks to withhold the information at issue, which is subject to section 552.022(a)(3), under section 552.103, section 552.107, and the attorney work-product privilege of section 552.111 of the Government Code. However, these sections are discretionary in nature and do not make information confidential under the Act. *See Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions); 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived).* Therefore, the district attorney's office may not withhold the information you marked under sections 552.103, 552.107, or 552.111 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider the district attorney's office's assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence for the information at issue. We note the attorney work-product privilege is found at rule 192.5 of the Texas Rules of Civil Procedure. However, the Texas Rules of Civil Procedure are applicable only to "actions of a civil nature." *See TEX. R. CIV. P. 2.* Thus, because the information at issue pertains to a criminal case, rule 192.5 is not applicable to this information, and the district attorney's office may not withhold any portion of the information at issue on the basis of the attorney work-product privilege in Texas Rule of Civil Procedure 192.5.

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 states the information at issue was prepared at the direction of attorneys for the district attorney's office and was communicated between district attorney's office employees and representatives in their capacities as clients. The district attorney's office states the information was communicated in furtherance of the rendition of professional legal services to the district attorney's office. The district attorney's office further states the communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the district attorney's office has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the district attorney's office may withhold the information you marked under Texas Rule of Evidence 503.

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

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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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 973625

Enc. Submitted documents

c: Requestor
(w/o enclosures)