



January 2, 2002

Mr. Randel B. Gibbs  
Ms. Lydia L. Perry  
Attorney For Lancaster I.S.D.  
Law Offices of Robert E. Luna  
4411 North Central Expressway  
Dallas, Texas 75205

OR2002-0015

Dear Mr. Gibbs and Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156764.

The Lancaster Independent School District (the "district"), which you represent, received a request for information relating to its legal fees for the past three years. You state that the district is making most of this information available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.105, and 552.107 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

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

Gov't Code § 552.022(a)(16). Attorney fee bills must be released under section 552.022(a)(16), unless they are expressly confidential under other law. Sections 552.107(1) of the Government Code, which excepts information that comes within the attorney-client privilege, and 552.105 are discretionary exceptions to disclosure. *See* Open Records

Decision Nos. 630 at 4 (1994) (governmental body may waive section 552.107(1)), 665 at 2 n.5 (2000) (discretionary exceptions generally). These exceptions do not constitute "other law" for purposes of section 552.022. Thus, we do not address your arguments under sections 552.107(1) and 552.105.

The attorney-client privilege also is found, however, in rule 503 of the Texas Rules of Evidence. The Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and 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 determine whether any of the submitted information is confidential under rule 503. Rule 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 for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503. A communication is "confidential" if 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 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. Upon

a demonstration of all three factors, the information is privileged and confidential under rule 503, provided that 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, no writ).

The district claims the attorney-client privilege with respect to four entries in the submitted attorney fee bills. We have reviewed the information in question and marked the entries that we find to be privileged under Texas Rule of Evidence 503. The district may withhold the marked information. The remaining information is not excepted from public disclosure and must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

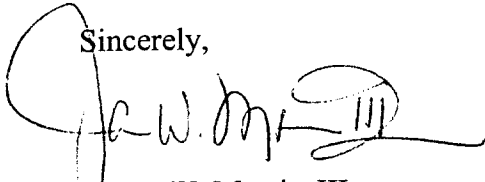
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', written over a large, stylized initial 'J'.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 156764

Enc: Marked documents

c: Ms. Arvivan Roberts  
1516 W. Main Street  
Lancaster, Texas 75146  
(w/o enclosures)