



January 15, 2015

Ms. Melody K. Smith
Counsel for Duncanville Independent School District
Stasburger & Price, L.L.P.
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

OR2015-00866

Dear Ms. Smith:

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# 550515.

The Duncanville Independent School District (the "district"), which you represent, received a request for information detailing legal fees paid to outside counsel by the district in 2013 relating to the handling of open records requests, including the date of the expense, the amount of the expense, a description of the expense, and the number of hours billed. You state the district is releasing some of the requested information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted information.

Initially, you state, and we agree, the portions of information you have marked in blue are not responsive to the request for information because they do not pertain to the handling of open records requests. This ruling does not address the public availability of any information

¹We note that, although you cite to section 552.101 of the Government Code, you make no argument to support this exception. Therefore, we presume you have withdrawn your claim this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302. Additionally, although you raise section 552.022 of the Government Code, this provision is not an exception to disclosure. *See id.* § 552.022 (enumerating categories of information not excepted from disclosure unless made confidential under Act or other law).

that is not responsive to the request, and the district need not release such information in response to this request.

Next, as you acknowledge, the submitted attorney fee bills are 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 district must release the submitted attorney fee bills pursuant to section 552.022(a)(16) unless the information is confidential under the Act or other law. *Id.* Although you assert portions of this information are excepted from disclosure under section 552.107 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 6 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information at issue under section 552.107. However, the Texas Supreme Court has held the Texas 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 address your argument under Texas Rule of Evidence 503.

Texas Rule of Evidence 503 enacts the attorney-client privilege. 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(b)(1). 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).

When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* ORD 676 at 6-7. 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. *Id.* Upon a demonstration of all three factors, the information is 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, no writ).

You assert the responsive information you have marked in black documents privileged attorney-client communications made between district staff, district representatives, and outside counsel for the district for the purpose of facilitating the rendition of professional legal services to the district. You state the communications were intended to be and have remained confidential. Upon review, we find some of the information you have marked either reveals communications with individuals you have not demonstrated are privileged parties or the information is not a communication. Accordingly, this information, which we have marked, is not privileged under rule 503 and may not be withheld on this basis. Based on your representations and our review, we conclude, with the exception of the information we have marked, the district may withhold the remaining responsive information you have marked in black under Texas Rule of Evidence 503. As no further exceptions to disclosure have been raised, the district must release the remaining responsive 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 550515

Enc. Submitted documents

c: Requestor
(w/o enclosures)