



February 2, 2015

Ms. Susan K. Bohn
Assistant Superintendent and General Counsel
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, Texas 78738

OR2015-02014

Dear Ms. Bohn:

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# 552135 Ref Nos. DL 5063, DL 5064, and DL 5074).

The Lake Travis Independent School District (the "district") received three requests from the same requestor for information related to all resignations or terminations of district employees and contractors during October 2014; all employee exit interview documents that were created or submitted during October 2014; and all billing statements, invoices, and receipts for all legal expenses of the district received or paid during October 2014. You state the district has released 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. We have considered your arguments and reviewed the submitted information.

We note the district has redacted some of the submitted information. You state the district has redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ Further, we understand the district has redacted information subject to

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.² However, you do not assert, nor does our review of our records indicate, the district is authorized to withhold the remaining redacted information without first seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Because we can discern the nature of the remaining redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the district must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

We note some of the submitted information 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:

...

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

Id. § 552.022(a)(16). Tab 2 consists of attorney fee bills subject to section 552.022(a)(16). Thus, Tab 2 must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold this information under section 552.107 of the Government Code. However, this section is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the information subject to section 552.022 may not be withheld under section 552.107. The Texas Supreme Court has held, however, the 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). Accordingly, we will address your attorney-client privilege claim under rule 503 of the Texas Rules of Evidence. We will also consider your argument against disclosure under section 552.107 for the information not subject to section 552.022.

²Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c)(2).

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 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 contends the attorney-client privilege is applicable to the entirety of the information in the submitted attorney fee bills. Alternatively, the district seeks to withhold marked portions of the fee bills. We note section 552.022(a)(16) provides information "that is *in* a bill for attorney's fees" is not excepted from disclosure unless the information is confidential under the Act or other law or protected by the attorney-client privilege. *See*

Gov't Code § 552.022(a)(16) (emphasis added). Thus, by its express language, section 552.022(a)(16) does not permit an attorney fee bill to be withheld in its entirety. *See also* Open Records Decisions Nos. 676 (attorney fee bill cannot be withheld in its entirety on basis it contains or is attorney-client communication pursuant to language in section 552.022(a)(16)), 589 (1991) (information in attorney fee bill is excepted only to extent it reveals client confidences or attorney's legal advice). Accordingly, we will determine whether the district may withhold the information it has marked in the fee bills under rule 503. The district states the attorney fee bills contain communications between the district and attorneys of the district that were made for the purpose of facilitating the rendition of professional legal services. The district does not indicate it has waived the attorney-client privilege with regard to the communications. Upon review, we find the district may withhold the information we have marked under Texas Rule of Evidence 503. However, we find the remaining information at issue either is not a communication or consists of communications with parties whom you have not established are privileged parties for purposes of rule 503. Therefore, the district has not demonstrated the remaining information at issue consists of privileged attorney-client communications for the purposes of Texas Rule of Evidence 503. Thus, the district may not withhold the remaining information in Tab 2 on that basis.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. Gov't Code § 552.107. The elements of the privilege under section 552.107 are the same as those discussed for rule 503. 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. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

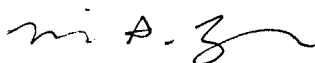
You state the information that is not subject to section 552.022 of the Government Code consists of a communication between the district's general counsel and a district employee that was made for the purpose of providing legal services to the district. You inform us the communication was intended to be confidential and has remained confidential. However, we note the communication has been shared with an individual you have not demonstrated is a privileged party. Therefore, we conclude you have failed to establish how the information at issue constitutes a communication between or among district employees and attorneys for the purposes of section 552.107(1). Thus, the district may not withhold the information not subject to section 552.022 on that basis.

In summary, the district may withhold the information we have marked in Tab 2 under Texas Rule of Evidence 503. The district 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 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 552135

Enc. Submitted documents

c: Requestor
(w/o enclosures)