



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2015

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

OR2015-11907

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# 567654 (PIR # 032315-1132/DL 5194 and 032315-1147/DL5215).

The Lake Travis Independent School District (the "district") received two requests from the same requestor for billing statements, invoices, and receipts for legal expenses received or paid during a specified time period. You state you have released some responsive information. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ 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 the submitted arguments and reviewed the submitted information.

We note the information in Tab 1 consists of attorney fee bills that are subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for

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 an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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. Gov’t Code § 522.022(a)(16). Section 552.107 of the Government Code, which excepts information within the attorney-client privilege, is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. Open Records Decision No. 630 at 4 (1994) (governmental body may waive section 552.107(1)).

However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information is confidential under Rule 503.

Rule 503(b)(1) provides:

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* Open Records Decision No. 676 (2002). 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 contend the attorney-client privilege is applicable to the entirety of the submitted attorney fee bills. Alternatively, you seek 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 you marked in the fee bills under Rule 503. You assert the submitted fee bills include privileged attorney-client communications between the district’s attorneys and attorney representatives and district employees. You state the communications at issue were made for the purpose of the rendition of legal services to the district. 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, the district has not demonstrated any of the remaining information constitutes privileged attorney-client communications for the purposes of Texas Rule of Evidence 503. Thus, the district may not withhold any of the remaining information in Tab 1 on that basis. As the district raises no further exceptions against disclosure, 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 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 cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 567654

Enc. Submitted documents

c: Requestor
(w/o enclosures)