



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Mr. Christopher H. Schulz
Schulman, Lopez, Hoffer & Adelstein, L.L.P
Counsel for Seguin Independent School District
700 Lavaca, Suite 1443
Austin, Texas 78755

OR2017-10411

Dear Mr. Schulz:

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# 658050

The Seguin Independent School District (the "district"), which you represent, received three requests from three different requestors for information regarding a named district official pertaining to a specified complaint, as well as any other complaints the district is investigating. You state you have released some information. You state you redacted private e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.117, and 552.135 of the Government Code. You also state release of some of the information at issue may implicate the proprietary interests of third parties. Accordingly, you state and submit documentation showing, you notified the affected third parties of the request for information and of their right to submit arguments stating why its information should not be released. *See* Gov't Code §§ 552.304 (providing that interested party may submit comments stating why information should or should not be released), .305 (permitting interested third party to submit to attorney general reasons why

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from an interested individual. *See* Gov't Code § 552.304.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-08661 (2017). In response to Open Records Letter No. 2017-08661, an interested party filed a lawsuit against our office. *See Stetson Roane v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-17-001843 (200th Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in this lawsuit, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public.² However, we will address the district's arguments against disclosure for the information not subject to the pending litigation.

Next, we note a portion 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information at issue contains a completed investigative report that is subject to section 552.022(a)(1). The district must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* Although you raise section 552.107 of the Government Code for the information subject to section 552.022 of the Government Code, this section is a discretionary exception to disclosure. *See* Open Records Decision Nos. 676 at 6 (2002) (attorney-client privilege under section 552.107 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information subject to section 552.022 under section 552.107. However, the Texas Supreme Court has held 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 assertion of the

²As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

attorney-client privilege under Texas Rule of Evidence 503 for the information subject to section 552.022. Further, as sections 552.101, 552.117, and 552.135 of the Government Code make information confidential, we will also consider the applicability of these exceptions to the information at issue. Additionally, we will consider your arguments for the remaining information not subject to section 552.022.

Texas Rule of Evidence 503 enacts the attorney-client privilege. 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* ORD 676. 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 explain the information subject to section 552.022 consists of a communication between attorneys for the district and district employees which was made to facilitate the rendition of legal services to the district. You further state this information has not been disclosed to third parties and has remained confidential. Based on your representations and our review of the information at issue, we find you have established the information subject to section 552.022, which we have marked, constitutes a privileged attorney-client communication under rule 503. *See Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328 (Tex. App.—Austin 2000, pet. denied) (concluding attorney's entire investigative report was protected by attorney-client privilege where attorney was retained to conduct investigation in her capacity as attorney for purposes of providing legal services and advice). Thus, the district may withhold the information we marked pursuant to rule 503 of the Texas Rules of Evidence.³

The district claims section 552.107 of the Government Code for the remaining information. Section 552.107(1) protects information that comes within the attorney-client privilege. *See Gov't Code § 552.107(1)*. The elements of the privilege under section 552.107 are the same as those 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. *See Huie*, 922 S.W.2d at 923.

You state the remaining information at issue consists of communications involving the district's attorneys and district employees. You indicate the communications were made for the purpose of facilitating the rendition of professional legal services to the district and that these communications have remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Thus, the district may withhold the remaining information under section 552.107(1) of the Government Code.⁴

In summary, we will allow the trial court to resolve the issue of whether the information that is the subject of Cause No. D-1-GN-17-001843 must be released to the public. The district may withhold the information we marked pursuant to rule 503 of the Texas Rules of

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Evidence. The district may withhold the remaining information under section 552.107(1) of the Government Code.

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, appearing to read "D. Michelle Case", with a stylized flourish at the end.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 658050

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)