



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2019

Ms. Amber K. King
General Counsel
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, Texas 78738

OR2019-01592

Dear Ms. King:

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# 746629 (ORR# 102118-13C8DL 5838).

The Lake Travis Independent School District (the "district") received a request for information pertaining to the district's legal expenses during a specified time period. The district states it is releasing some information to the requestor. The district states it 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 The district claims portions of the submitted information are privileged under Texas Rule of Evidence 503. We have considered the district's submitted arguments and reviewed the submitted information.

Initially, the district acknowledges, and we agree, the submitted information 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 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 expressly confidential under the Act or other law. Gov't Code

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: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

§ 552.022(a)(16). The Texas Supreme Court has held the Texas Rules of Evidence are “other law” for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). Accordingly, we will consider the district’s claim under Texas Rule of Evidence 503 for the information it marked.

Texas Rule of Evidence 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 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 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. *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). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, orig. proceeding). We note communications with third parties with whom a governmental entity shares a privity of interest are protected. *Open Records Decision Nos. 464* (1987), *429* (1985).

The district asserts the portions of the submitted fee bills it marked should be withheld under rule 503. The district asserts the submitted fee bills include privileged attorney-client communications between the district's attorneys, district representatives, and district officials and staff in their capacities as clients. The district states the communications at issue were made for the purpose of the rendition of legal services to the district. The district indicates the communications at issue have not been, and were not intended to be, disclosed to third parties. Based on the district's representations and our review, we find the district has established some of the information it marked constitutes attorney-client communications under rule 503. Accordingly, with the exception of the information we marked for release, the district may withhold the information it marked pursuant to rule 503 of the Texas Rules of Evidence. However, we find some of the communications at issue are with individuals the district has not demonstrated are privileged parties. Further, we find some of the information at issue does not document a communication. We note an entry stating a memorandum or e-mail was prepared, drafted, or reviewed does not demonstrate the document was communicated to the client. Therefore, the district may not withhold any portion of the information we marked for release under rule 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 746629

Enc. Submitted documents

c: Requestor
(w/o enclosures)